



How the ADA Addresses Addiction and Recovery

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Since the passage of the Americans with Disabilities Act (ADA) civil rights law in 1990, everything about disability in America has changed. At the time of that milestone, young people with mostly visible conditions (significant mobility limitations, blindness and deaf) led the movement. They modeled it on the Civil Rights and Women's movements and embraced an identity as people with disabilities. Today, US Census reports that 27% of the US adult population have disabilities (US Census, 2018). Millions of individuals are in recovery from addiction, and many unaware of their civil rights under the ADA.

The goal of this article is to explain how the ADA addresses alcohol use disorder (AUD) and substance use disorder (SUD). The ADA applies to AUD and SUD differently. This difference will be illustrated with stories about alcohol, opioids, cocaine, and marijuana.

The ADA ensures that people with disabilities have the same civil rights and opportunities as everyone else; this includes people with alcohol and substance use disorders. The ADA is clear – people with addiction are people with disabilities and have civil rights under the law if

they meet the ADA's definition of disability (Americans with Disabilities Act as Amended, 2008). The section of the ADA that addresses rights of people with Alcohol Use Disorder (AUD) and Substance Use Disorder (SUD) is the most underutilized part of the law. This article will hopefully change that.

What rights do people with addiction have? Rights are protected and obligations are defined in three of five main areas:

1. Access to employment (Title I) with a focus on reasonable accommodation, which is a change in the way work is performed (Americans with Disabilities Act, 2008).
2. Access to state and local government services, programs, and activities (Title II), such as public education, corrections and the courts (ADA, 2008).
3. Access to places of public accommodation (Title III), such as recovery homes, health care facilities and other private businesses that serve the public (ADA, 2008).

To be considered a person with a disability under the ADA, a person must meet one of the three definitions below. A person:

1. Has a physical or mental impairment that substantially limits one or more **major life activities**, e.g. someone with bi-polar disorder, diabetes or alcohol use disorder; or
2. Has a **history** of an impairment that substantially limits one or more major life activities, e.g. someone who has a history of cancer or someone in recovery from substance use; or
3. Is **regarded** as having such an impairment, e.g. an employer assumes an employee has a substance use disorder (whether or not the person actually has a SUD), and takes a negative employment action based on that belief, such as refusal to promote, giving a bad performance rating, or termination (ADA, 2008).

Major life activities include, but are not limited to walking, seeing, caring for oneself, learning, working, thinking, communicating and the operation of bodily functions, such as neurological and brain functions. Addiction is an impairment that affects brain and neurological functioning, which often impacts working, learning, and thinking, therefore addiction is an impairment that substantially limits one or more major life activities.

The ADA applies to alcohol use disorder and substance use disorder differently.

Alcohol Use Disorder & the ADA

Alcohol use disorder is generally considered a disability whether it is in the present or in the past. However, a person must meet the definition of disability. Notably, ADA applies to private employers with 15 or more employees and all state and local government employers to all aspects of employment; from the job application to benefits (ADA, 2008). The below workplace-related scenarios are fictional, and the purpose is to illustrate how the ADA applies to employment.

MICHAEL'S STORY

Michael is often late for work. His supervisor warns him about tardiness. The third time Michael is late, his supervisor gives him a written warning, stating that one more late arrival will result in termination. Michael tells his supervisor that he is addicted to alcohol. He says his late arrivals are due to his drinking and that he needs immediate time off for treatment.

Is Michael protected under the ADA? Yes, he is a person with a disability (alcohol use disorder), but it's complicated. The employer does not have to withdraw the written warning or grant an accommodation that supports Michael's drinking, like allowing him to arrive late in the morning. The employer can require an employee with addiction to alcohol to meet the same standards of performance and behavior as other employees. What the employer must grant is Michael's request to take leave to enter a rehabilitation program, unless the employer can prove that Michael's absence would cause a great difficulty or expense (undue hardship).

ISABELLA'S STORY

Isabella's manager hears a rumor that she is addicted to alcohol, and reassigns her to a less stressful job with lower pay because of concerns that work stress contributes to her drinking, despite the fact that she has not had any work-related problems.

Is Isabella protected under the ADA? Yes, she is being regarded as having a disability (whether she actually has AUD or not) and has been negatively affected. Isabella's manager violated the ADA when he reassigned Isabella to a lower paying job.

Substance Use Disorder & the ADA

Unlike AUD, the ADA has specific rules regarding SUD, and the ADA protects only people in recovery who are no longer engaging in the illegal use of drugs.

The illegal use of drugs pertains to both:

1. Use of illegal drugs such as heroin or cocaine.
2. Use of prescription medications such as OxyContin or Morphine
IF the person has no prescription,
OR is using more than is prescribed,
OR has a fraudulent prescription.

The ADA defines current illegal use as, "use occurring recently enough to justify a reasonable belief that a person's drug use is a real and ongoing problem" (US Commission on Civil Rights, 2000).

Does this mean days, weeks, or months? Clearly, if an individual's drug test is positive, current use is indicated. Courts have considered how close in proximity an individual's illegal drug use is to an adverse action to be considered "currently engaging" in the illegal use of drugs. Under the ADA, whether someone is currently using drugs illegally is decided on a case-by-case basis.

The below scenarios are fictional, and the purpose is to illustrate how the ADA protects people in recovery who are no longer engaging in the illegal use of drugs.

MARIANNA'S STORY

Marianna has been heroin-free for three years. She applies for a job that she is qualified to do. The employer refuses to hire her because he knows about her past addiction.

Is Marianna protected under the ADA? Yes, she is protected under the ADA because she has a history of an impairment (addiction to heroin), and has refrained from the use of illegal drugs for three years, which is a good indication that there is not an ongoing problem and she is not engaging in current illegal use. The potential employer violated the ADA when he refused to hire Marianna because of her recovery status.

BINH'S STORY

Binh's supervisor notices changes in his behavior. She sees Binh sleeping at his desk, hears him slurring his speech on the phone, and notices that he has lost weight. In addition, his work productivity is lower. She speaks with Binh about his behavior and job performance. Binh tells her that he is using heroin and needs to go to treatment.

Does Binh have any protections under the ADA? No, Binh is not protected by the ADA. Binh's performance and conduct is due to his **current illegal use of drugs**, therefore, the employer has no legal obligation to provide a leave of absence and may take whatever disciplinary actions deemed appropriate. Under the company's drug use policy, Binh can be fired for using illegal drugs at work. However, nothing in the ADA would limit the company's ability (if the company chooses) to offer leave or other assistance that may enable Binh to receive treatment.

Last Chance Agreements

A provision in the ADA that can be used only for people with AUD and SUD who are about to be terminated from their job is called, "last chance agreement" (*The U.S. Equal Employment Opportunity Commission, 2017*). "Last chance agreements" are typically structured with a time frame, and are crafted and signed by the employee and employer. An employer agrees not to terminate the employee in exchange for an employee's agreement to, for example, receive substance use treatment, take periodic drug tests, and avoid further workplace conduct or performance problems. A violation of the agreement such as frequent disappearances from the worksite, absences without notification, or unreliability in keeping appointments might warrant termination because the employee failed to meet the conditions agreed for continued employment.

Knowing that relapse is a part of the recovery process, there are ways to reduce relapse with an accommodation. For example, a nurse with SUD was restricted from dispensing medication after being caught using illegal drugs. Her employer had a policy of allowing employees to participate in rehabilitation and return to work with a last chance agreement. When the nurse returned to work from rehabilitation, she was offered a position that did not require her to dispense medication and given periodic drug tests (*Job Accommodation Network, 2020*).

Substance Use Disorder and the Legal Use of Drugs

The ADA applies to persons who become addicted while taking a prescription drug in the prescribed manner and in prescribed amounts.

JENNIFER'S STORY

Jennifer became addicted to Percocet while taking the medication in a prescribed manner and in prescribed amounts.

Is Jennifer protected under the ADA? Yes, she is protected under the ADA because she is legally using a drug as prescribed for an underlying condition. However, if she takes more than prescribed, she may not be covered under the ADA. If Jennifer wants to take a leave of absence from work to taper off Percocet, she is a person with a disability and may have rights to an accommodation. She needs to discuss the possibility of an accommodation with her employer.

The ADA, Medical Marijuana, and State Law

Both recreational and medical marijuana are illegal under Federal law. Therefore, the ADA, which must follow Federal law, offers no protection if an employer makes decisions against an individual based on his or her

use of marijuana. However, under some state laws, medical marijuana use is legal. If medical marijuana is legal under state law, employers may need to consider reasonable accommodations under a state disability discrimination law for off worksite use (*Barbuto v. Advantage Sales and Marketing, 2017*). There is a wide variance in what these laws say and what type of protection they may extend to job applicants and employees.

Medication Assisted Treatment

Medication-assisted treatment (MAT) includes granting an individual a legal prescription of a medication such as Suboxone, Methadone, or Vivitrol to treat his or her addiction. These drugs are legally prescribed medications used to treat addiction, just like insulin is legally prescribed to treat diabetes.

JULIE'S STORY

Julie has been in recovery from addiction to Oxycontin for 5 years and is receiving MAT. She works in the office at a day care center. Her boss learns about her former addiction and tells her to "get off methadone" or "you'll be fired."

Does Julie have protections under the ADA? Yes, Julie has a history of addiction and is being regarded as a current user of illegal drugs because of her medical treatment. Her boss is incorrectly regarding the use of methadone as an illegal drug.

The ADA requires that people with disabilities must be able to participate in and benefit from state and local government services, programs, and activities in public education, corrections, and the courts (*Title II of the ADA, 2008*).

TOM'S STORY

Tom is in medication-assisted treatment (MAT). In MAT, a person is legally prescribed medication such as Suboxone, Methadone, or Vivitrol to treat their addiction. He appeared in family court and requested that he begin to see his children on the weekend. The judge responded to his request saying, "You'll see your children when you get off Suboxone."

Is Tom protected under the ADA? Yes, he has a history of addiction which is usually true for MAT participants. Suboxone is a legally prescribed medication to help Tom function just like insulin is prescribed for the health and function of a person with diabetes. Family court is regarding the use of Suboxone as though it is an illegal drug. Tom's use of Suboxone cannot, by itself, justify the court refusing to let Tom see his children on the weekend.

People who enter the correctional system in MAT are often discontinued on their medication. Are inmates protected under the ADA? Yes, generally correctional systems have an obligation to provide legally prescribed medications to people when the correctional facility has a medication dispensary program. If such programs exist, then MAT should be dispensed just like it is in the case of medication for cancer, bi-polar disorder or epilepsy. When the correctional system does not have a medical dispensary, a reasonable modification of policy can be written to provide a person access to their medication (*Pesce v. Coppinger, 2018*).

In the third main area of protected rights, the ADA requires places of public accommodations to provide goods and services to people with

disabilities in such places as sober homes, health care facilities and other private businesses that serve the public (Title III of the ADA, 2008).

ALEX'S STORY

Alex had a double hip replacement and needs to go into a private rehabilitation facility for physical therapy for a month. When the rehabilitation facility finds out he is being prescribed methadone, they refuse to accept him as a patient.

Is Alex protected under the ADA? Yes, methadone is a legally prescribed drug used to treat addiction. The rehabilitation facility violated the ADA when it denied Alex admission because of his medication assisted treatment.

Whether a state or local government or a privately owned facility, many recovery homes and sober houses deny residents use of legally prescribed medicine to treat opioid use disorder. It can be a violation of the ADA, the Fair Housing Act (FHA) or both laws, to turn people away from sober and halfway houses for MAT. Both the ADA and FHA require public entities to grant “reasonable accommodations to policies, practices and procedures” so that individuals with disabilities can access equal housing opportunities (Miller, 2018).

Conclusion

Thirty years after the passage of the ADA, thousands of people in recovery are unaware of their civil rights under the law. It is critical for addiction professionals to be aware that the ADA has protections for the people they serve. It helps professionals to stay informed and provides those they serve with the information, support and advocacy to trigger those rights.

When the ADA was passed, US Congress asked, “How will people understand this very complex law?” Their response was to create ten regional ADA Centers to provide information, guidance and training on the ADA, called the ADA National Network (ADANN) (www.ADA.org). The ADANN provides a safe, confidential way for individuals, businesses and governments to ask an ADA question.

It took 30 years of people with disabilities telling their stories and triggering their civil rights under the ADA to bring about systemic changes in education, employment, and civic life. Today, people with addiction and addiction professionals must become aware of their civil rights, so lives can change for the better and end discrimination under the ADA. The ADA provides a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities. It's up to all of us to make this part of the law a more utilized one.

REFERENCES

- Americans with Disabilities Act of 1990 as Amended (P.L. 110-325) Sec. 12114. Illegal use of drugs and alcohol p. 45-47 (2008). Retrieved from <https://www.ada.gov/pubs/adastatute08.pdf>
- Americans with Disabilities Act of 1990 as Amended (P.L. 110-325) Sec. 12102. Definition of disability p. 7 (2008). Retrieved from <https://www.ada.gov/pubs/adastatute08.pdf>
- Americans with Disabilities Act 1990, as Amended Subchapter I – Employment [Title I] Sec. 12111. P. 8 (2008). Retrieved from <https://www.ada.gov/pubs/adastatute08.pdf>
- Americans with Disabilities Act 1990, as Amended (P.L. 110-325) Subchapter II – Public Services [Title II] Sec. 12131. P. 16 (2008). Retrieved from <https://www.ada.gov/pubs/adastatute08.pdf>
- Americans with Disabilities Act 1990, as Amended (P.L. 110-325) Subchapter III – Public Accommodations and Services Operated by Private Entities [Title III] Sec. 12181. P. 30 (2008). Retrieved from <https://www.ada.gov/pubs/adastatute08.pdf>

Learn About Your Rights

The ADA National Network

Find your ADA Center: www.ADATA.org

The ADA, Addiction and Recovery Fact Sheet

<https://adata.org/factsheet/ada-addiction-and-recovery>

The ADA, Addiction, Recovery and Employment Fact Sheet

<https://adata.org/factsheet/ada-addiction-recovery-and-employment>

ADA, Addiction and Recovery PDF

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

How to File a Complaint

US Equal Employment Opportunity Commission (EEOC)

<https://www.eeoc.gov/employees/howtofile.cfm>
1-800-669-4000 or info@eeoc.gov

United States Attorney's Office Civil Rights Unit

Opioid Initiative in each state Department of Justice office

State and Local Governments and Public Accommodations

Department of Justice
https://www.ada.gov/filing_complaint.htm
1-800-514-0301

- Barbuto v. Advantage Sales and Marketing, Supreme Judicial Court of Massachusetts. SJC-12226. Reporter 477 Mass. 456 (2017). Retrieved from <https://www.ebglaw.com/content/uploads/2017/10/Barbuto-v-Advantage-Sales-and-Marketing-LLC-477-Mass.pdf>
- Batiste, L. Job Accommodation Network Last Chance Agreements for Employees with Drug and Alcohol Addictions. Retrieved from <https://askjan.org/publications/consultants-corner/Last-Chance-Agreements-for-Employees-with-Drug-and-Alcohol-Addictions.cfm>
- Miller, J. (2018, May 17). Settlement clarifies discrimination for buprenorphine use. Retrieved from <https://www.psychcongress.com/article/ethics/settlement-clarifies-discrimination-buprenorphine-use>
- Pesce v. Coppinger, United States District Court of Massachusetts. Nov 26, 2018 355F. Supp.3d (D.Mass. 2018). Retrieved from <https://www.aclum.org/en/cases/pesce-v-coppinger>
- US Census. (2018). *Americans with disabilities: 2014 Household economic studies current population reports*: Danielle M. Taylor Author. Retrieved from <https://www.census.gov/content/dam/Census/library/publications/2018/demo/p70-152.pdf>
- U.S. Commission on Civil Rights. (2000). *Sharing the dream: Is the ADA accommodating all?* Chapter 4 Substance Abuse under the ADA. US Commission of Civil Rights: Author. Retrieved from <https://www.usccr.gov/pubs/ada/main.htm>
- U.S. Equal Employment Opportunity Commission. (1997). *The Americans With Disabilities Act: Applying performance and conduct standards to employees with disabilities*. Section G. U.S. Equal Employment Opportunity Commission: Author. Retrieved from <https://www.eeoc.gov/facts/performance-conduct.html#fn3>

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Oce Harrison, EdD, has directed the Institute for Human Centered Design's New England Americans with Disabilities Act (ADA) Center since 2001. She provides ADA Employment trainings and Addiction, Recovery and the ADA trainings throughout New England. Recently, Harrison has been working with organizations such as Learn to Cope and Massachusetts Organization for Addiction Recovery. She is also conducting research on identifying characteristics of people with disabilities and challenges to implementing the ADA for municipalities in New England.