

# Addiction, Recovery and the ADA

By the New England ADA Center

A project of the Institute for Human Centered Design, and member of the ADA National Network.

200 Portland St. Boston, MA

800-949-4232 voice/tty



New England



Center



National Network

# AGENDA

1. Overview of the Americans with Disabilities Act
2. Definition of Disability and:
  - Alcohol Addiction
  - Substance Use and Opioid Use Disorders
3. ADA Titles I, II and III:
  - Employment
  - State and Local Governments
  - Public Accommodations
4. How to File an ADA Complaint
5. Resources

# Americans with Disabilities Act

Provides a clear and comprehensive national mandate for the elimination of discrimination against people with disabilities.



# Structure of ADA

## **Title I – Employment**

Key term: reasonable accommodation

## **Title II – State and local government**

Key term: access to programs, activities and services

## **Title III – Places of public accommodation**

Key term: access to goods and services

# Structure of ADA

## **Title IV - Telecommunications**

Requires access to telephone system via relay.

## **Title V - Miscellaneous Provisions**

# ADA

## Definition of Disability

1. A physical or mental impairment that *substantially limits* one or more *major life activities*
2. A *record* of such an impairment
3. Being *regarded* as having such an impairment

# Definition of Disability

## First Part

A person who has

a physical or mental impairment that  
**substantially limits** a *major life activity*

# What are Major Life Activities?

Major life activities include, but are not limited to:



# Major Life Activities

---

## Examples in ADA

Caring for oneself	Walking	Learning
Performing manual tasks	Standing	Reading
Seeing	Lifting	Concentrating
Hearing	Bending	Thinking
Eating	Speaking	Communicating
Sleeping	Breathing	Working

# Major Bodily Functions = Major Life Activities

---

## Examples in ADA

Immune System	Neurological
Normal cell growth	Brain
Digestive	Respiratory, Circulatory
Bowel	Endocrine
Bladder	Reproductive

# Substantial Limitation

How do you know when a major life activity is substantially limited?

- Compare the major life activity with **most people** in the general population.
- Should not require extensive analysis.

Congress wants broad coverage.

# Scenario

Michael is late several times for work. His supervisor warns him several times about his tardiness.



The next time the Michael is tardy, the supervisor issues him a written warning stating that one more late arrival will result in termination.

Michael tells his supervisor that he is addicted to alcohol. His late arrivals are due to drinking the previous night, and says he needs treatment.

Does Michael have protections under the ADA?

Yes, he does have rights, but it's complicated.



The employer does not have to rescind written warning nor grant an accommodation that supports Michael's drinking, like a modified work schedule that allows him to arrive late in the morning due to the effects of drinking the previous night.

However, absent undue hardship, employer must grant the employee's request to take leave for the next month to enter a rehab program.

# Definition of Disability

## Episodic or Remission

Impairments that are episodic or that go into remission are considered disabilities if they substantially limit a major life activity *when active*.

Examples: bipolar disorder, post-traumatic stress disorder, epilepsy, addiction and cancer.

# Scenario



Miguel is addicted to alcohol. He'll be fine for months but a few times a year he binge drinks and is late for school. The binge drinking usually lasts 2-3 days.

Is he a person with a disability under the ADA?

Yes, his impairment substantially limits a major life activity of learning.

# Definition of Disability

## Second Part

Has a **history** of an impairment that substantially limits a major life activity

e.g. cancer





# Scenario

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

Is she protected under the ADA?

Yes, Marianna is protected under the ADA because she has a history of an impairment (addiction to cocaine), and has refrained from the use of illegal drugs.

# Definition of Disability

## Third Part

Being *regarded as* having an impairment



# Scenario

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 she would get stressed out and return to drinking.

Is she protected under the "regarded as" part of the definition?

Yes, she is being regarded as having a disability, and has been negatively affected.

# Scenario



Julie has been in recovery for 5 yrs. from addiction to OxyContin. She is in medically assisted treatment (MAT).

She works in the office at a day care center. Her boss learns about her former addiction & tells her to “get off” methadone or you’ll be fired.

Is Julie protected under the ADA?

Yes, Julie is being regarded as a current user of drugs because of her medical treatment.

# Mitigating Measures



- For civil rights protection, mitigating measures are not considered when deciding if an impairment substantially limits a major life activity.
- Mitigating measures: medication, prosthetics, mobility devices and hearing aids, etc.

# Scenario



Tom is in medically assisted treatment. 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?

# Tom Hits the ADA Jackpot!

- 1. Yes, Tom has a history of disability:** MAT participants usually have a history of addiction to controlled substances. ([Controlled Substances Act](#))
- 2. Regarded as:** Family court is treating the use of Suboxone as a drug that substantially limits a major life activity, or they believe Suboxone is an illegal drug.
- 3. Mitigating measure:** Suboxone when taken as prescribed is a mitigating measure for people in recovery in a MAT.

# The ADA makes a distinction between alcohol addiction and the illegal use of drugs





# Alcohol Addiction



**Alcohol addiction** generally is a “disability” regardless of whether it is in the present or in the past.

# Substance Use Disorder

recovery

The ADA protects a person in recovery who is no longer engaging in the current illegal use of drugs.

# In Recovery Means:

- (1) is in recovery from substance use disorder
- (2) has ceased engaging in the illegal use of drugs
- (3) is either participating in a supervised rehabilitation program or
- (4) has been successfully rehabilitated

# What Does “Illegal Use of Drugs” Mean?



- Use of Illegal drugs such as heroin or cocaine.
- Use of controlled substances:

**BUT** person has no prescription

**OR** has a fraudulent prescription

*Note: the ADA looks to the Controlled Substances Act*

# 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.**”

Under the ADA, current drug use is decided on a **case-by-case basis.**

# Remember Julie?



What if Julie's employer found out that she recently used cocaine while in MAT?

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



illegal

**No, The ADA does not protect individuals who are “currently engaging in the illegal use of drugs.”**

What if Julie's employer found out that she recently used marijuana while in MAT?

Would she have rights under the ADA?





No. Under federal law, marijuana is illegal even if it is used with a medical prescription.

# Marijuana

in all its forms is illegal under federal law



\* However, check state law

# Medical Marijuana and State Law

- Medical Marijuana **is** legal under some state's law.
- Employers may need to consider reasonable accommodations for offsite use of medical marijuana under state law.

\*An employee who shows up high to work has NO protections under either federal or state law.

# Legal Use of a Prescribed Medication

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

Is she protected under the ADA?

~~it~~ legal



Yes, she is protected under the ADA because she is legally using drugs.

\*But, if she takes more than prescribed, she may not be covered.

# ADA Employment

Applies to private employers with 15 or more employees and all state and local government employers.

Applies to all aspects of employment: job application, job training

... and other terms or conditions and privileges of employment.

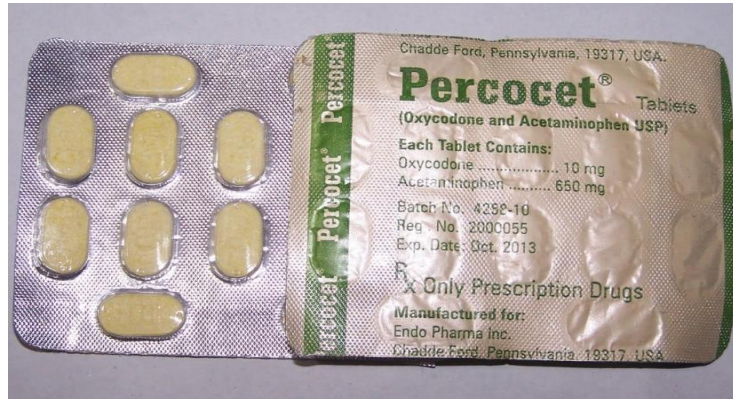
# Key Term

## Reasonable Accommodation

- a change in the way any aspect of the employment process usually happens
- **Changes/modification to:**
  - hiring
  - work environment
  - company policies
  - other benefits of employment



# Remember Jennifer?



She becomes addicted to Percocet and wants to take a leave of absence from her job to taper off the drug.

Does she have rights under the ADA?

Yes, 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 boss.



# Making the Request

- Usually the person with the disability makes the request for a reasonable accommodation.
- The employee and employer work together to identify an appropriate accommodation - this is an informal interactive process.
- The accommodation must be effective, not necessarily the one the person requested.

# Title II State and Local Governments

People with disabilities must be able to participate in and benefit from all state and local government **programs, services & activities.**

- Courts
- Law enforcement
- Public education
- Transportation
- Recreation
- Health care
- Social services
- Voting

# General Nondiscrimination Requirements

- Ensure an equal opportunity to participate and benefit.
- Prohibit exclusion, segregation, and unequal treatment.
- Prohibit eligibility criteria that screen out persons with disability unless criteria are necessary.

# General Nondiscrimination

## Reasonable Modifications

When necessary to ensure equal opportunity to participate, “reasonable modifications” must be made to policies, practices, procedures.

# Scenario

A state has a policy that people who enter the correctional system in MAT are taken off their medications.

Does this policy violate the ADA?



# Title II State and Local Governments

- Yes, generally correctional systems have an obligation to provide legally prescribed medications to people entering with a prescription when the correctional facility has a medication dispensary program.
- Then, an MAT should be treated like medication for diabetes or cancer.

# Title III Public Accommodations

ADA requires places of public accommodations to provide an equal opportunity to people with disabilities.

- Pharmacies
- Insurance offices
- Restaurants
- Movie theaters
- Private schools
- Hospitals
- Health care
- Social services
- Day care centers
- Hotels

# General Nondiscrimination Requirements

- Ensure an equal opportunity to participate and benefit.
- Prohibit exclusion, segregation, and unequal treatment.
- Prohibit eligibility criteria that screen out persons with disability unless criteria are necessary.



# General Nondiscrimination

## Reasonable Modifications

When necessary to ensure equal opportunity to participate, “reasonable modifications” must be made to policies, practices, procedures.

# Scenario



Some nursing homes are refusing admission to patients being treated for opioid addiction.

Recently, the Department of Justice (DOJ) successfully sued a nursing home that was in violation of the ADA for not accepting a patient in MAT.

# How to File an ADA Complaint

- **Title I: Employment:** US Equal Employment Opportunity Commission (EEOC)  
<https://www.eeoc.gov/employees/howtofile.cfm>  
1-800-669-4000
- **Title II and III: State and Local Governments and Public Accommodations:** Department of Justice  
[https://www.ada.gov/filing\\_complaint.htm](https://www.ada.gov/filing_complaint.htm)  
1-800-514-0301

# Resources

- **Questions about your rights?** Call: 1-800-949-4232  
ADA National Network [www.ADAta.org](http://www.ADAta.org)
- **ADA Employment Web Course** free and available 24/7  
<http://learn.NewEnglandADA.org>
- **Employees with Alcoholism**  
<https://askjan.org/media/alcohol.html>
- **Employees with Drug Addiction**  
<https://askjan.org/media/drugadd.html>

# Resources Continued

- **Technical Assistance Manual on Employment Provisions of the ADA DRUG AND ALCOHOL ABUSE Section VIII**  
[https://www.eeoc.gov/policy/docs/adamanual\\_add.html](https://www.eeoc.gov/policy/docs/adamanual_add.html)
- **The Americans with Disabilities Act Title II Technical Assistance State and Local Government Programs and Services. Drug addiction as an impairment.**  
<https://www.ada.gov/taman2.html>

# Institute for Human Centered Design



An international education and design non-profit dedicated to enhancing the experiences of people of all ages and abilities through excellence in design.

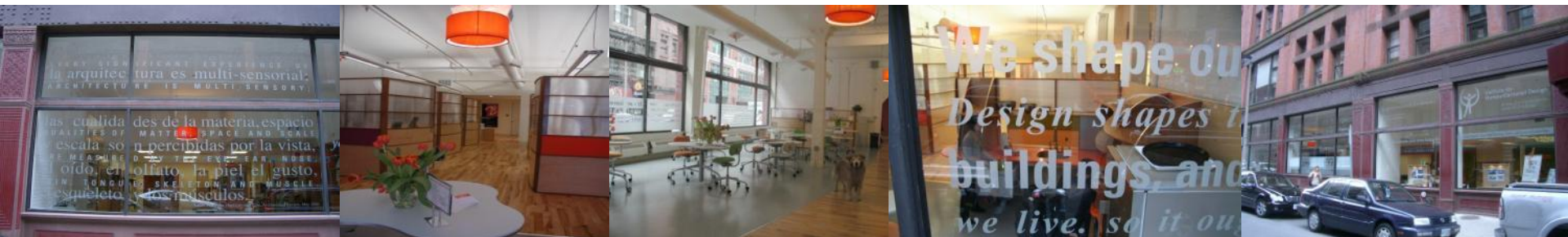




Variation in ability is ordinary, not special, and affects most of us for at least part of our lives.

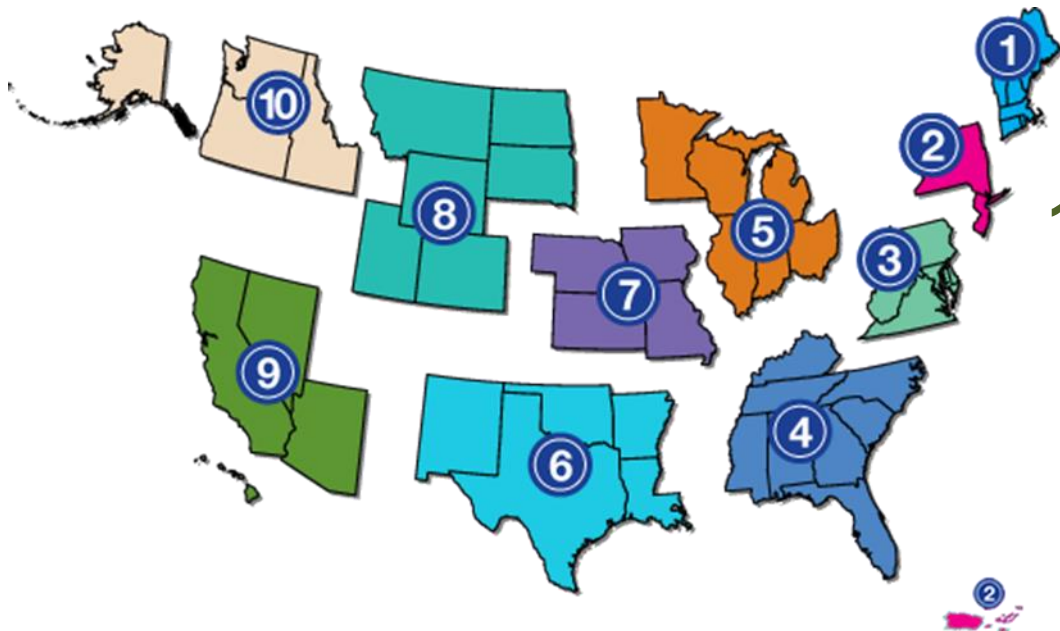
## *core beliefs...*

Design powerfully and profoundly influences everyone and our sense of confidence, comfort, and control.



# New England ADA Center

project of the Institute for Human Centered Design and a member of



**1-800-949-4232 voice/TTY**

**Funded by the National Institute on Disability, Independent Living and Rehabilitation Research**



# Thank You!

Created by the New England ADA Center,  
a project of the Institute for Human Centered Design

For questions about this presentation:

617-695-0085

[ADAinfo@NewEnglandADA.org](mailto:ADAinfo@NewEnglandADA.org)

**For questions about the ADA:**

1-800-949-4232