

ADA and Substance Use Disorders in the Workplace

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1. ADA and Substance Use Disorders in the Workplace

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2. Disclaimer

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3. Learning Objectives

1. Define disability as it applies to alcohol use disorder, substance abuse disorder (SUD), and opioid use disorder.
2. List the obligations for employers under ADA Title I (Employment).
3. List the obligations for employees with SUD under ADA Title I (Employment).

4. Southeast ADA Center

- Funded by the **National Institute on Disability, Independent Living and Rehabilitation Research (NIDILRR)** through the Administration for Community Living (ACL) and U.S. Department of Health and Human Services.
- **Phone:** 1-800-949-4232 or 404-541-9001
- **Email:** adasoutheast@syr.edu
- **Web:** adasoutheast.org

Image: Map of eight U.S Southeast Region States served by Southeast ADA Center

5. Let's Look at the Numbers

6. Substance Use Disorder (SUD) and any Mental Illness among Adults Aged 18 or Older: 2020

- 73.8 million adults either had SUD or mental illness.
- Diagram has a yellow circle overlapping a blue circle with an area of green in the middle.
 - Yellow circle shows 20.9 million adults who have substance use disorder but not a mental illness.
 - Blue circle shows 35.9 million adults who have mental illness but not substance use disorder.
 - Green area shows 17 million people who have both substance use disorder and mental illness.

Source: Substance Abuse and Mental Health Services Administration (SAMHSA)

Web: [tinyurl.com/2020-SAMHSA-NSUD-Report](https://www.samhsa.gov/2020-SAMHSA-NSUD-Report)

7. More Numbers

- Over 22 million Americans are currently in recovery from alcohol and other drug use disorders.
- More than 70% of individuals who actively use alcohol or drugs continue to function on the job.

Harvard Health Blog: [Working on addiction in the workplace](#)

Source: Harvard Health Publishing, Harvard Medical School, Harvard University

Web: [health.harvard.edu/blog/working-on-addiction-in-the-workplace-2017063011941](https://www.health.harvard.edu/blog/working-on-addiction-in-the-workplace-2017063011941)

8. Snapshot: The Spirit of the ADA

- Ensures that people with disabilities have the same rights and opportunities as everyone else.

- Includes people with addiction to alcohol, and people in recovery from opioid and substance use disorders.

Images: President George H.W. Bush signs the Americans with Disabilities Act during a ceremony on the South Lawn of the White House on July 26, 1990. Reverend Wilkie accepts his pen with his left foot.

9. The Five Titles of the ADA

- **Title I** **Employment Protections.**
- **Title II** **Public Entities and Transportation.**
- **Title III** Public Accommodation and Commercial Facilities.
- **Title IV** Telecommunications.
- **Title V** Technical Provisions.

10. The Definition of Disability

Under the ADA, disability is defined as a legal term, not a medical term.

- Has a **physical or mental impairment** that **substantially limits** one or more **major life activities**; or
- Has a **history** of a physical or mental impairment that substantially limits one or more major life activities; or
- Is **regarded** as having such an impairment.

11. Addiction is an impairment that can substantially limit:

- brain and neurological functioning
- working
- learning
- sleeping
- eating
- concentrating
- caring for oneself
- remembering

Image: Cognition depicted by three cog wheels of various size within the outline of a human head that is surrounded by various icons, symbols, and equations for math and science.

12. Alcohol Addiction, Illegal Use of Drugs. What is the Difference?

The ADA makes a **distinction** between:

- an **addiction to alcohol**;
- and the **illegal use of drugs**.

13. Alcohol Addiction

- Is **generally a “disability”** regardless of whether it is in the present or in the past.
- A person still **must meet the definition of disability**.

14. Substance Use Disorders

The ADA protects a person who is:

- in **recovery**; and
- **no longer engaging** in the **current illegal use of drugs**.

Image: The word "recovery" in a rainbow of colors.

15. What does “In Recovery” Mean?

A person is:

- **in recovery from substance use disorder** and is **no longer engaging** in the illegal use of drugs;
or
- participating in a **supervised rehabilitation program** and is **no longer using drugs illegally**

16. What Does “Illegal Use of Drugs” Mean?

- **Use of illegal drugs** such as heroin or cocaine.
- **Use of controlled substances** such as opioids or morphine BUT a person:
 - has **no** prescription; or
 - has a **fraudulent** prescription; or
 - is **using more** than prescribed.

17. What do we mean by “Current” illegal drug use?

- “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.**

18. ADA Title I Employment

19. Does the ADA Apply to all Employers?

- Applies to **private employers with 15 or more employees** and **all state and local government employers**.
- Applies to **all aspects** of employment: job application, interview, job training, etc.
- ... and **other terms or conditions and privileges** of employment.

20. The Three Stages of Employment

The ADA addresses addiction and recovery during in each stage of employment:

- Stage 1:** Pre-Employment, Pre-Offer
- Stage 2:** Pre-Employment, Post-Offer
- Stage 3:** On the job

21. Stage 1: Pre-Employment, Pre-Offer

- The ADA **prohibits all disability-related questions, and medical exams, even if** they are related to the job.
- These **questions can reveal a disability.**

22. Stage 1: What Employers Cannot Ask

- Are you taking prescription drugs?
- Do you have a disability, illness or condition that will prevent you from doing this job?
- Have you ever been treated for addiction to alcohol, opioids, or other drugs?

23. Stage 1: Gaps in Employment

- If asked about the gaps, does the job applicant have to mention their addiction?
 - **It depends...**

24. Stage 1: How to Respond to Questions About Gaps in Employment?

- Applicant can say that she had an illness, is recovered, and excited to get back to work.
- If the employer asks a **specific question** about her disability (addiction), she should:
 - tell the truth, even though the question is illegal.
 - If she does not tell the truth and is caught lying, this is cause for not hiring.
 - The employer, however, can be found liable for asking an illegal question.

25. Stage 1: Questions an Employer Can Ask About Alcohol/Illegal Drugs

- Questions about use of alcohol/illegal drugs that are **allowed**:
 - **Have you ever used, or do you currently use ___?**
- A positive or negative answer does not reveal a disability.

26. Stage 1: Questions an Employer Cannot Ask About Alcohol/Illegal Drugs

- Questions about **extent or frequency of use** are unlawful.
 - **How much alcohol or drugs do, or did you, consume?**
 - **How often do you, or did you, drink alcohol or use illegal drugs?**
- These questions may reveal an addiction.

27. Stage 2: Pre-Employment, Post-Offer

- An employer may **make medical inquiries**, require **medical exams**, and ask **disability-related questions** if this is done for all employees within a job category.
- **All questions about use of alcohol/drugs, or extent of use, or diagnosis of alcohol/drug addiction** are allowed.
- At this stage, **the new hire must disclose a disability, if asked.**

28. Stage 3: On the Job

- An employer may make disability-related inquiries and require medical examinations ***only*** if they are **job-related and consistent with business necessity.**

29. Stage 3: On the Job. Allowable Questions (slide 1 of 2)

An employer may ask:

- about an **employee's well-being**.
 - **Example:** How are you?
- about **non-disability-related impairments**.
 - **Example:** How did you break your leg?
- about the **employee's ability to perform job functions.**

30. Stage 3: On the Job. Allowable Questions (slide 2 of 2)

An employer may ask:

- if an employee has been **drinking**.
- an employee's **current illegal use of drugs**.
- for the **name and telephone number of a person to contact in case of a medical emergency.**

31. Stage 3: On the Job. Questions not Allowed

An employer may not ask:

- about the **nature or severity of an employee's disability**;
- **another person** about an employee's disability;
- about an employee's **genetic information** [also not allowed under the Genetic Information Nondiscrimination Act (GINA)]
- about an employee's **prior workers' compensation history**.

32. Scenario 1: Marianna

- Marianna has been heroin-free for 6 years.
- She applies for a job that she is qualified to do.
- The employer refuses to hire her because she knows about her past addiction.
- **Is Marianna protected under the ADA?**

Image: An application for employment.

33. Scenario 2: Michael

- Michael is often late for work.
- His supervisor warns him about his lateness.
- 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.
- His late arrivals are due to his drinking, and he needs immediate time off for detox and treatment.
- **Does Michael have protections under the ADA?**

34. Scenario 3: Julie

- Julie has been in recovery for 5 years from addiction to Oxycontin.
- She is under medical treatment for opioid use disorder.
- She works in the office at a day care center.
- Her boss learns about her former addiction.
- She tells her to “get off” methadone or you will be fired.
- **Does Julie have protections under the ADA?**

35. Scenario 3: Julie (a new twist)

- What if Julie's employer found out that she recently used cocaine while in medical assisted treatment (MAT)?
- **Would Julie have rights under the ADA?**

36. Scenario 3: Julie (another twist)

- What if Julie's employer found out that she recently used marijuana while in MAT?
- **Would Julie have protections under the ADA?**

37. Medical Marijuana and State Law

- If medical marijuana is legal under state law, employers may need to consider reasonable accommodations for off-site use of medical marijuana under state law.
- ****However, an employee who is high in the workplace has **NO** protections under federal or state law.****

Image: Medical cannabis ID card.

38. Scenario 4: Juan

- Juan became addicted to Percocet while taking the medication in a prescribed manner and in prescribed amounts.
 - **Is Juan protected under the ADA?**

39. Scenario 4a: Juan

- Juan wants to take a leave of absence from his job to taper off Percocet.
- **Does Juan have protections under the ADA?**

40. Scenario 4b: Juan

- What if Juan's employer found out that he was using heroin on the job?
- **Would Juan have rights under the ADA?**

41. ADA National Network Publications (slide 1 of 2)

- [The ADA, Addiction, and Recovery Fact Sheet](http://adata.org/factsheet/ada-addiction-and-recovery)
Web: adata.org/factsheet/ada-addiction-and-recovery
- [The ADA, Addiction, Recovery, & State and Local Governments Fact Sheet](http://adata.org/factsheet/ada-addiction-and-recovery-and-government)
Web: adata.org/factsheet/ada-addiction-and-recovery-and-government

42. ADA National Network Publications (slide 2 of 2)

- [The ADA, Addiction, Recovery, and Employment Fact Sheet](#)
Web: adata.org/factsheet/ada-addiction-recovery-and-employment
- [Reasonable Accommodations in the Workplace](#)
Web: adata.org/factsheet/reasonable-accommodations-workplace
- [Work-Leave, the ADA, and the FMLA](#)
Web: adata.org/factsheet/work-leave

43. Southeast ADA Center Resources

- [ADA Live! Podcast: Opioid Addiction and the ADA](#)
Web: adalive.org/episodes/episode-67
- [ADA Live! Podcast: Opioid Addiction and the ADA with the U.S. Department of Justice](#)
Web: adalive.org/episodes/episode-68
- [Resource List: Opioid Addiction and the ADA](#)
Web: adalive.org/resources/episode-67-resources

44. U.S. Equal Employment Opportunity Commission (EEOC) Enforcement Guidance (slide 1 of 3)

- [Reasonable Accommodation and Undue Hardship Under the ADA](#)
Web: eeoc.gov/policy/docs/accommodation.html
- [Preemployment Disability-Related Questions and Medical Examinations](#)
Web: eeoc.gov/policy/docs/preemp.html
- [Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act](#)
Web: eeoc.gov/policy/docs/guidance-inquiries.html

45. U.S. Equal Employment Opportunity Commission (EEOC) Enforcement Guidance (slide 2 of 3)

- [The ADA: Applying Performance and Conduct Standards to Employees with Disabilities](#)
Web: eeoc.gov/facts/performance-conduct.html
- [Employer-Provided Leave and the ADA](#)
Web: eeoc.gov/eeoc/publications/ada-leave.cfm
- [Questions and Answers About the Association Provision of the Americans with Disabilities Act](#)
Web: eeoc.gov/facts/association_ada.html

46. U.S. Equal Employment Opportunity Commission (EEOC) Enforcement Guidance (slide 3 of 3)

- [Use of Codeine, Oxycodone, and Other Opioids: Information for Employees](#)
Web: eeoc.gov/laws/guidance/use-codeine-oxycodone-and-other-opioids-information-employees
- [How Health Care Providers Can Help Current and Former Patients Who Have Used Opioids Stay Employed](#)
Web: eeoc.gov/laws/guidance/how-health-care-providers-can-help-current-and-former-patients-who-have-used-opioids

47. Job Accommodation Network (JAN) Resources

- [Job Accommodation Network Home Page](#)
Web: askjan.org
- [Accommodation and Compliance: Alcoholism](#)
Web: askjan.org/disabilities/Alcoholism.cfm
- [Accommodation and Compliance: Drug Addiction](#)
Web: askjan.org/disabilities/Drug-Addiction.cfm

48. How to File an ADA Complaint with the EEOC

U.S. Equal Employment Opportunity Commission (EEOC)
[How to File a Charge of Employment Discrimination](#)

Web: eeoc.gov/employees/howtofile.cfm

Phone (voice): 1-800-669-4000

ASL Video Phone: 1-844-234-5122

Email: info@eeoc.gov

49. How to File an ADA Complaint with the DOJ

U.S. Department of Justice

[How to File an Americans with Disabilities Act Complaint with the U.S. Department of Justice](#)

Web: ada.gov/filing_complaint.htm

Phone (voice): 1-800-514-0301

TTY: 1-800-514-0383

50. Questions?

51. Contact ADA National Network

Phone: 800-949-4232

Email: [Online Form: Email ADA National](#) at adata.org/email

Website: adata.org

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