



National Network

Information, Guidance and
Training on the Americans with
Disabilities Act

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The Americans with Disabilities Act, Addiction, and Recovery for Private Businesses and Nonprofits

The Americans with Disabilities Act (ADA) ensures that people with disabilities have the same rights and opportunities as everyone else. This includes people with addiction to alcohol and people in recovery from opioids and other substances.

The ADA (Title III) applies to private businesses, nonprofits and businesses that are open to the public and whose operations affect commerce. Examples include healthcare and nursing homes. The goods and services offered by these entities must be accessible to people with disabilities. The ADA also requires that when a person with a disability asks for a modification of policies or the way the business operates, that modification must be considered.

Definition of Disability

A person has a disability under the ADA if the person has:

1. A physical or mental impairment that substantially limits one or more **major life activities**, e.g. someone with bi-polar disorder, diabetes, or addiction to alcohol; or
2. A **history** of an impairment that substantially limited one or more major life activities, e.g. someone who has a history of cancer; or someone in recovery from the illegal use of drugs; or



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3. Been **regarded** as having such an impairment, e.g. someone has a family member who has an addiction to alcohol, so it is assumed that they also have an addiction to alcohol and face discrimination as a result, or someone who is perceived to have a disability and is treated negatively based on the assumption of disability.

Major life activities include, but are not limited to, walking, seeing, caring for oneself, learning, thinking, communicating, as well as the operation of bodily functions, such as neurological and brain functions.

Addiction is generally considered a disability because it is an impairment that affects the brain and neurological functions.

The ADA applies to addiction to alcohol and to the illegal use of drugs differently. Addiction to alcohol is generally considered a disability whether use of alcohol is in the **present** or in the **past**. For people with an addiction to opioids and other drugs, the ADA protects a person **in recovery who is no longer engaging in the current illegal use of drugs**.

Illegal use of drugs means:

- Use of illegal drugs such as heroin or cocaine; and/or
- The misuse of prescription medications such as opioids or benzodiazepines where the person has **no** prescription, has a **fraudulent** prescription, or is using **more medication than prescribed**.

In recovery means:

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

What does “current” mean?

- The use of the drugs occurred recently enough to have a reasonable belief that a person’s drug use is a real and ongoing problem.
- Can be demonstrated where a person fails a drug test or indicates they may fail such a test.



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- Isn't limited to days, weeks, or months but is decided on a case by case basis.

Medication Assisted Treatment

In medication assisted treatment (MAT) program, a person is legally prescribed medication such as Suboxone, Methadone, or Vivitrol to treat their addiction, along with counseling. A person in MAT who no longer engages in the illegal use of drugs is considered a person with a disability and is protected by the ADA. A person's medication is so specific to them and for the treatment of their disability that denying someone access to goods and services because of a medication they are prescribed is discrimination on the basis of disability.

Blanket Policies

Under the ADA, businesses and nonprofits, including healthcare, can't adopt blanket policies that negatively impact people with disabilities such as denying access to services to people in recovery. An individualized assessment must be made regarding whether the business can provide services to the person with a disability with or without reasonable modifications of policies and practices.

Skilled Nursing Scenario

Josephine has been in recovery for five years since she started MAT. Recently, she was hospitalized for pneumonia and is now being transferred to a skilled nursing facility to continue care with the goal of returning home. Her doctor sent the completed admissions paperwork and was preparing her for the transfer. The admissions coordinator contacted Josephine about her medications, specifically her prescription for Methadone. The coordinator explained, "We don't accept anyone taking Methadone because we don't have anyone to administer it or a way to store it. If you stop taking Methadone, I would be happy to reconsider your application."

Does Josephine have protections under the ADA? Yes, she does. The skilled nursing facility has discriminated against her based on the fact that she is a person with a disability in recovery and more specifically because Josephine



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is in MAT, taking Methadone. The skilled nursing facility cannot deny her admission on the basis of the medication she has been prescribed by her doctor for her disability. The skilled nursing facility must admit Josephine, and allow her to continue to take her prescribed medications, including Methadone while she is a patient.

Recovery Home Scenario

Lucy is newly in recovery and in MAT. She has begun applying to recovery homes, including a nonprofit recovery home in her city. The recovery home director asks about her prescription, and she explains that she takes Adderall for her ADHD. The director states that they don't allow any addictive medications in the home and that she would have to switch her ADHD medication.

Is Lucy protected under the ADA? Yes, Lucy is protected under the ADA because she is not currently engaging in the illegal use of drugs and qualifies for the recovery program. The recovery home can't have a blanket policy around denying access based on the medications an applicant is prescribed as long as the medication is being taken as prescribed. If security is a concern, the director can set up a lockbox system or other security system that meets everybody's needs.

Healthcare Scenario

Arturo is in recovery in MAT. He recently moved and starts searching for a primary care doctor near his new home. On the application of a nearby practice, he is asked about medical conditions and the medications he is currently prescribed. He is denied services because of his prescription for Suboxone. The practice indicated that Arturo needs a doctor that specializes in MAT.

Is Arturo protected under the ADA? Yes, Arturo is a person in recovery who is prescribed Suboxone, a legally prescribed drug used to treat addiction. The healthcare facility violated the ADA when it denied Arturo's application based upon his medication assisted treatment. The healthcare center violated the ADA and must change their policy of refusing patients based upon a prescription that treats addiction.



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Educational Internship Scenario

Joseph is in recovery from addiction to heroin and has been in MAT for two years. He is enrolled in a graduate school's addiction counseling program and was refused an internship at a recovery home because he is taking Suboxone.

Is Joseph protected under the ADA? It depends. It could be a violation of the ADA depending on the reason for the refusal. There are some recovery homes that do not accept applicants who are in MAT. This happens because some recovery homes believe that people who are prescribed Suboxone as part of their recovery are using drugs illegally and take negative actions based on this incorrect belief. Another reason might be the recovery home has a philosophy of medication abstinence. A recovery residence should not accept or reject an applicant solely based on their use of their prescribed medication, as such exclusions violate the ADA. The college has an obligation to make sure that its internship placements do not discriminate against students with disabilities. The intern could also contact the Office of Civil Rights at the Department of Education or the Department of Justice if discrimination occurs.

Healthcare Access When Intoxicated

Up to this point this factsheet has focused on people who are in recovery from the illegal use of drugs. Generally, people can't be currently engaging in the illegal use of drugs and be protected by the ADA. However, there is one exception. A person who is currently engaging in the illegal use of drugs can't be denied healthcare because of their current use if they would ordinarily qualify for the services.

Scenario: Four years ago, Daniel injured his shoulder playing sports. Once his prescription for pain medication ran out, he started using heroin. Recently, he has felt quite sick with symptoms including problems breathing and fever. He seeks help at his local emergency room, but is turned away because he is "high."

Is Daniel protected under the ADA? Yes, Daniel is protected under the ADA because he can't be denied treatment that he would normally qualify for on



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the basis of his current use of illegal drugs. The emergency room staff would need to triage him and run the tests that would typically be run for someone with similar symptoms.

People showing signs of acute intoxication are sometimes expelled from emergency rooms by staff who are fearful of their behavior or who assume they are only seeking drugs. A hospital emergency room may not refuse to provide emergency services to an individual because the individual is illegally using drugs. Daniel can only be excluded if his behavior poses a significant safety risk and the emergency room is unable to lower the risk to a safe level through the provision of reasonable modification.

Need more information?

If you have questions about your rights or obligations under the ADA, contact your local ADA Center. Each center has ADA specialists who provide information and guidance to anyone requesting ADA information. You can call toll-free at 1-800-949-4232. You can also email your local center by clicking the following link and completing the form: adata.org/email. All calls and emails are treated anonymously and confidentially.

References

Drugs, Alcohol and the ADA. Great Lakes ADA Center.

http://www.adagreatlakes.org/Publications/Legal_Briefs/BriefNo33_Drugs_Alcohol_and_the_ADA.pdf



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