Learning Objectives

1. Enable you to understand the Americans with Disabilities Act's (ADA) protections for people with alcohol, substance and opioid use disorders
2. Help you to identify potential discrimination under the ADA that people in treatment and recovery may experience
3. Provide clear guidance on where to reach out to assist individuals in filing complaints of discrimination (DOJ or other appropriate federal agency)

Overview

1. Overview of the Americans with Disabilities Act (ADA)
2. ADA's Application to People with Substance Use Disorder
3. Recent Enforcement Activity
The Americans with Disabilities Act (ADA): SUDs and Barriers to Treatment and Recovery

Americans with Disabilities Act
Ensures that people with disabilities have the same rights and opportunities as everyone else. This includes people with alcohol use disorder, and people in recovery from opioid and substance use disorders.

Polling Question 1
How familiar are you with the ADA?
A. I’m an expert; I can easily recognize when and how it applies.
B. I’m familiar with it, but I’m not an expert.
C. I’ve heard about it but would not be able to explain how it applies.
D. I know nothing (and can’t wait to learn more today!)

ADA: Overview
Prohibits discrimination on basis of disability in:
- Employment
- State & local Government
- Public accommodations
The Americans with Disabilities Act (ADA): SUDs and Barriers to Treatment and Recovery

Presented by Oce Harrison, EdD and Charlotte Lanvers, JD

ADA: Overview

Definition of “Disability”

- a physical or mental impairment that substantially limits one or more major life activities;
- a record (or past history) of such impairment; or
- being regarded as having a disability

ADA: Overview

Definition of “Disability” (cont.)

- Impairment – OUDs are impairments under the ADA. Individuals with OUDs that substantially limit one or more of their major life activities are generally considered “disabled” under the ADA.

ADA: Overview

Definition of “Disability” (cont.)

- Major Life Activities – include caring for oneself, learning, concentrating, thinking, communicating, working, and the operation of major bodily functions, including neurological and brain functions.
ADA: Overview

Definition of “disability” is expansive

- The definition of “disability” should be interpreted broadly
- Whether an individual’s impairment is a disability under the ADA should not demand extensive analysis
- The term “substantially limits” shall be construed broadly in favor of expansive coverage
- The definition provides an extensive, non-exhaustive list of examples of major life activities

Polling Question 2

How familiar are you with protections for people with AUD, OUD, and SUD under the ADA?

A. I’m an expert; I can easily recognize when and how it applies.
B. I’m familiar with it, but I’m not expert.
C. I’ve heard about it but would not be able to explain how it applies.
D. I know nothing (and can’t wait to learn more today)!

The ADA addresses addiction to alcohol and the illegal use of drugs differently
The Americans with Disabilities Act (ADA): SUDs and Barriers to Treatment and Recovery

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19

Addiction to Alcohol

Generally is a “disability” regardless of whether it is in the present or in the past. However, a person still has to meet the definition of disability.

20

Scenario

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?

Yes, Michael is a person with a disability (addiction to alcohol), but it’s complicated. The employer does not have to withdraw the warning.

The employer must grant Michael’s request to take leave to enter a rehab program, unless the employer can prove that Michael’s absence would cause a great difficulty or expense (undue hardship).
ADA: Application to OUD and SUD

ADA Exclusion

"Individual with a disability" does not include an individual who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use.

Currently engaging in the illegal use of drugs means illegal use of drugs has occurred recently enough to indicate that the individual is actively engaged in such conduct.

ADA: Application to OUD

But the ADA does protect an individual who:
- has successfully completed a supervised drug rehabilitation program or has otherwise been rehabilitated successfully and is no longer using drugs illegally;
- is participating in a supervised rehabilitation program and is no longer using drugs illegally; or
- is mistakenly regarded as using drugs illegally, but in fact is not.
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 person has no prescription
  - OR has a fraudulent prescription
  - OR is using more than prescribed

Scenario

Marianna has been heroin-free for 3 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 she protected under the ADA?

Yes, Marianna 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 Marianna because of her recovery status.
Scenario

Julie has been in recovery for 5 yrs. from addiction to Oxycontin. She is in medical 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.”

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.

Prepared by the Legal Action Center with support from Partners for Recovery

What if Julie’s employer found out that she recently used cocaine while in medical assisted treatment (MAT)?

Would she have rights under the ADA?

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

Prepared by the Legal Action Center with support from Partners for Recovery
Or, what if Julie’s employer found out that she recently used marijuana while in MAT?

Would she have protections under the ADA?

No, Marijuana in all its forms is illegal under federal law.

Medical Marijuana and State Law

If medical marijuana is legal under state law as in Massachusetts, then employers may need to consider reasonable accommodations for onsite use of medical marijuana under state law:

Check your state law.

*However, an employee who shows up high to work has NO protections under either federal or state law.
Legal Use of a Prescribed Medication

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

Is James protected under the ADA?

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

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

James wants to take a leave of absence from his job to taper off Percocet.

Does James have protections under the ADA?

Yes, 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.
What if James’ employer found out that he was using heroin on the job?

Would he have rights under the ADA?

Last Chance Agreement

No. However, nothing in the ADA would limit the employer’s ability to offer leave or other assistance that may allow James to receive treatment.

ADA: Application to OUD, SUD and AUD

Obligations of Health Care

Health care providers may not deny health or drug rehabilitation services to individuals because of their current or illegal use of drugs or alcohol intoxication if they are otherwise entitled to such services.

*However a drug rehabilitation or treatment program may deny participation to individuals who engage in illegal use of drugs while they are in the program.
**ADA TITLE I: EMPLOYMENT**

Requires employers with 15+ employees to provide qualified individuals with disabilities an equal opportunity to benefit from the full range of employment-related opportunities

- Recruitment
- Pay
- Hiring & Promotions
- Demotions
- Training
- Other privileges of employment
- Reasonable accommodations

**Definition of Reasonable Accommodation**

A feasible change in the job environment or in performance of job duties to enable a qualified individual with a disability to perform the essential functions.
**ADA TITLE I: EMPLOYMENT**

**Defenses: Undue Hardship**

A reasonable accommodation is not required if the employer can demonstrate that the accommodation would amount to an **undue hardship**, which means **significant difficulty or expense**.

**Defenses: Qualification Standard**

Qualification standards, tests, or selection criteria that screen out, or tend to screen out, or otherwise deny a job to an individual with a disability are permissible when:

1. such standards are **job-related and consistent with business necessity** and
2. such **performance cannot** be accomplished by reasonable accommodation.

**Defenses: Direct Threat**

Qualification standards may include a requirement that an individual not **pose a direct threat to the health or safety of the individual or others** that cannot be eliminated or reduced by reasonable accommodation.
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ADA TITLE I: EMPLOYMENT

Inquiring About a Disability

➢ Before making a job offer: Generally, No
➢ After making a conditional offer but before the person starts: Only if the employer requires all candidates to take the same medical exam and/or respond to the same inquiries
➢ For employees: Only if medical exams or inquiries are job-related and consistent with medical necessity

Application and Interview Process

ADA prohibits disability related questions & medical exams because they can reveal a disability

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

ADA TITLE I: EMPLOYMENT

Drug Testing

➢ A test to determine the illegal use of drugs is not a "medical examination" under the ADA.
➢ The ADA does not encourage or prohibit drug testing or making employment decisions based on those testing results.
Eduardo is a check-out clerk at a local big box store and a model employee. He has difficulty standing for long periods of time due to muscle pains related to his methadone treatment. His employer refused to provide him with a stool as a reasonable accommodation so that he could sit down at the cash register when necessary until the muscle pains passed.


Applicant alleged Volvo made a conditional job offer to a qualified applicant for a laborer position. During his post-offer physical examination, the applicant alleged that he explained that he was taking medically-prescribed Suboxone. Upon reporting for his first day of work, Volvo informed him that it could not hire him because of his Suboxone use.
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ADA TITLE II: STATE AND LOCAL GOVERNMENTS

➢ Covers all activities of state & local governments (termed: public entities) regardless of the receipt of federal funding
  ➢ Courts
  ➢ Law enforcement services
  ➢ Access to public education
  ➢ Transportation
  ➢ Recreation
  ➢ Health care
  ➢ Social services
  ➢ Voting

➢ Requires public entities to provide individuals with disabilities an equal opportunity to benefit from all of their programs, services & activities unless one of the defenses applies [see next slide]

ADA TITLE II: STATE AND LOCAL GOVERNMENTS

➢ Public entities do not need to make reasonable modifications in policies, practices, or procedures if the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program, or activity.

➢ Public entities may impose legitimate safety requirements necessary for the safe operation of its services, programs, or activities.

➢ Public entities are not required to permit an individual to participate in or benefit from the services, programs, or activities of that public entity when that individual poses a direct threat to the health or safety of others.

ADA TITLE II: STATE AND LOCAL GOVERNMENTS

What Might Illegal Discrimination Look Like?

➢ A city adopts and enforces zoning rules that subject residential substance use disorder programs to a more burdensome approval process than the city requires of similar entities.

05/27/2020
ADA TITLE II: STATE AND LOCAL GOVERNMENTS

United States v City of Baltimore:
DOJ successfully challenged discriminatory zoning rules that subjected residential substance use disorder programs to a burdensome approval process to which similar entities were not subjected

DOJ Settlement with the City of Ansonia:
To remedy discriminatory barriers that barred operation of a Connecticut treatment facility for individuals with substance use disorders

A parole board prohibits inmates with a record of drug addiction from consideration for parole.

Jim, an inmate, has a record of drug addiction but is not currently illegally using drugs.

Title II covers child welfare agencies’ and courts’ interactions with parents who are in recovery from OUD.

Child welfare agencies and court systems should not subject parents to blanket eligibility criteria that screen out individuals with OUD from participation in their programs, services, or activities.
Scenario

In some instances, people who enter the correctional system in MAT are discontinued on their medication.

Are inmates protected under the ADA?

- 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, MAT should be treated like medication for diabetes or cancer.

ADA TITLE III: PUBLIC ACCOMMODATIONS
The Americans with Disabilities Act (ADA): SUDs and Barriers to Treatment and Recovery

ADA TITLE III: PUBLIC ACCOMMODATIONS

Twelve categories of places of public accommodation, including:

| Pharmacies | Insurance offices | Professional offices of health care providers | Hospitals | Social service center establishments |

Twelve categories of places of public accommodation, including:

- Pharmacies
- Insurance offices
- Professional offices of health care providers
- Hospitals
- Social service center establishments

DOJ Settlement with Selma Medical Associates, Inc.

- Medical facility that provides primary and specialty care allegedly refused to accept a prospective patient for an appointment due to the patient’s use of Suboxone
- Facility allegedly regularly turned away prospective patients who lawfully took controlled substances to treat their medical conditions.

What Might Illegal Discrimination Look Like?

DOJ Settlement with Selma Medical Associates, Inc.

- Allegedly imposed eligibility criteria that screened out individuals with OUD
- Allegedly denied equal opportunity to benefit from the facility's services
- Allegedly failed to make reasonable modifications to policies necessary to afford services to individuals in treatment for OUD

Selma Medical Associates, Inc.

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- Allegedly denied equal opportunity to benefit from the facility's services
- Allegedly failed to make reasonable modifications to policies necessary to afford services to individuals in treatment for OUD
ADA TITLE III: PUBLIC ACCOMMODATIONS

Selma Medical Associates, Inc. agreed to:
- Not deny services on the basis of disability, including OUD
- Not apply standards of criteria that screen out individuals with disabilities
- Adopt non-discrimination policies and train staff
- Pay $30,000 in damages to complainant and a $10,000 civil penalty

ADA TITLE III: PUBLIC ACCOMMODATIONS

DOJ Settlement with Charlwell Operating, LLC
- Skilled nursing facility allegedly denied admission to a patient with OUD due to the patient’s use of Suboxone
- Allegedly imposed eligibility criteria that screened out individuals with OUD
- Allegedly denied equal opportunity to benefit from the facility’s services

What Might Illegal Discrimination Look Like?

Charlwell Operating, LLC agreed to:
- Adopt a non-discrimination policy
- Provide training on the ADA and OUD to admissions personnel
- Pay a civil penalty of $5,000 to the United States
Athena Health Care refused to accept patients with OUD. These individuals were seeking admissions to their facilities for health issues unrelated to their OUD.

Resources

ADA National Network
Questions about the ADA?
Call: 1-800-949-4232
Visit: https://ADAto.org/find-your-region

The ADA, Addiction and Recovery Fact Sheet
https://ADAto.org/factsheet/ada-addiction-and-recovery

The ADA, Addiction, Recovery and Employment Fact Sheet
https://ADAto.org/factsheet/ada-addiction-recovery-and-employment

Filing an Employment-Related Complaint

The U.S. Equal Employment Opportunity Commission (EEOC) receives and investigates complaints regarding employment discrimination, including on the basis of disability.

www.eeoc.gov | info@eeoc.gov
1-800-669-4000 or 1-800-669-6820 (TTY)
53 field offices across the country

Note that an individual often has only 180 days (or 300 days) from the date of the alleged discrimination to file.
The Americans with Disabilities Act (ADA): SUDs and Barriers to Treatment and Recovery

Filing an ADA Complaint/ADA Resources

File a Complaint at:

[ ADA.gov ]

Call the ADA Information Line:

800-514-0301 (voice) or 800-514-0383 (TTY)

Thank You! Any Questions?

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www.naadac.org/ADA-SUD-eliminating-barriers-webinar
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UPCOMING WEBINARS

June 10th, 2020
Substance Use Disorder in the African American Community
By: Sherry Watkins, PhD, LCSEH-C, LCAS, CRC, CGS, BC-TMH

Counseling Emerging Adults with Substance Use Disorders
By: Fred Dyer, PhD, CADC and Jessica A. Love Jordan-Banks, MHS, CADC

June 17th, 2020
Identifying Barriers and Resources When Working with Deaf and Hard of Hearing People with SUD
By: Debi Gutthtten, EdD, NIC

Academy Series, Session II: Updates on Federal SUD Funding
By: Robert I.L. Morrison, Executive Director & Director of Legislative Affairs for NAADAC

www.naadac.org/webinars

MORE FROM NAADAC

EMERGENCY RESPONSE WEBINARS:
COVID-19: Telehealth for Opioid Addiction Interventions
By: Marlene M. Maheu, PhD

The Impact of Disaster on Recovery: The Perfect Storm
By: Timothy Legg, PhD, PsyD, PMHNP-BC, MAC

Psychological First Aid During COVID-19
By: Fredrick Doranmeneh, PhD, UWEC, MHC, CASAC

Virtual Town Hall: Understanding the Impact of COVID-19 on the Addiction Profession
By: Thomas P. Britton, DrPH, LPC, LCAS, ACS, Lisa Dinhofer, MA, CT, and Andrew Kolody, MD

- Telehealth During COVID-19 and Beyond: Integrative Treatment for Co-Occurring Disorders
  By: Fredrick Doranmeneh, PhD, UWEC, MHC, CASAC

- Virtual Workplace Wellness: Successfully Managing Change and Reducing Stress
  By: PerCilla Zeno, CCHW, CPRS

www.naadac.org/covid-19-resources

Clinical Supervision in the Addiction Profession Specialty Online Training Series

Part One: The Supervisory Relationship
By: Thomas Durham, PhD.

Part Two: Using Technology for Clinical Supervision
By: Malcolm Horn, PhD, LCSW, MAC, SP

Part Three: Legal and Ethical Issues in Supervision
By: Thomas Durham, PhD.

Part Four: Stages of Clinical Supervision
By: Thomas Durham, PhD.

Part Five: How to Structure Clinical Supervision
By: Cynthia Monsees, S-ready, BSW, NCAC II, CDC III, SAP and Samson Teklemariam, MA, LPC, CPTM

Part Six: Motivational Interviewing in Clinical Supervision – A Parallel Process
By: Alan Lyme, LISW, MAC

www.naadac.org/clinical-supervision-online-training-series

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