

Substance Abuse and the ADA (Title I)



**Independent Living Research Utilization
A Program of TIRR Memorial Hermann
1-800-949-4232**

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This presentation is informal guidance and not legal advice

Not Me

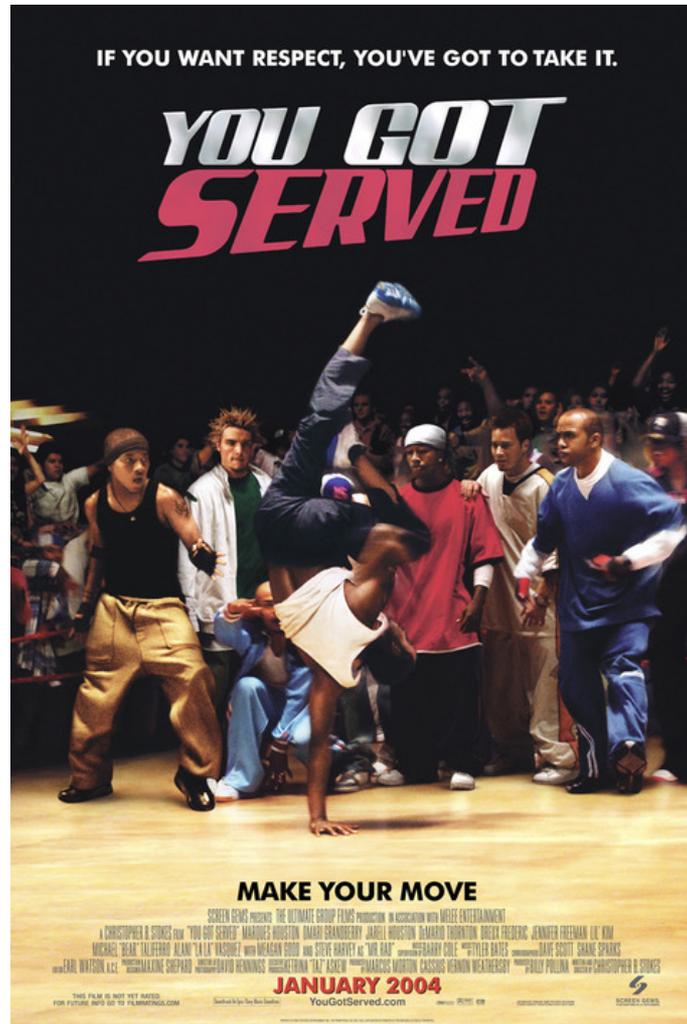


Overview

What is the Americans with Disabilities Act?



Why should I care about the ADA?



1. To avoid being served with a summons and complaint (lawsuit)

Why should I care about the ADA?



2. Just over one in four of today's 20 year-olds will have a disability at least once before reaching retirement age.

Social Security Basic Facts

<http://www.ssa.gov/news/press/basicfact.html>

Why should I care about the ADA?



3. The average reasonable accommodation costs about \$500

<http://askjan.org/media/lowcosthighimpact.html>

Variety of Disabilities

- Physical (mobility, strength, dexterity, stamina)
- Sensory (vision, hearing, speech)
- Non-obvious disabilities (intellectual, cognitive, psychiatric, learning disabilities; health conditions such as cancer, diabetes, etc.)

Five Titles of the ADA

Title I. Employment

Prohibits disability discrimination in all employment processes

Title 2. Accessibility in public entities

Physical and program accessibility in state/local govt. entities

Title 3. Accessibility in businesses

Physical and program accessibility in restaurants, hotels, stores, places of business

Title 4. Telecommunications

Telephone and communications systems for the public

Title 5. Miscellaneous

Protection from retaliation



The Basics: ADA and employment (Title I)

Enforced by Equal Employment Opportunity Commission (EEOC)

Applies to private sector workplaces with 15 or more employees

Applies to all state/local government employers

Protects against disability discrimination in all employment processes

Limits employer disability inquiry

Reasonable accommodation unless there is undue hardship



Which employers are covered by the ADA?

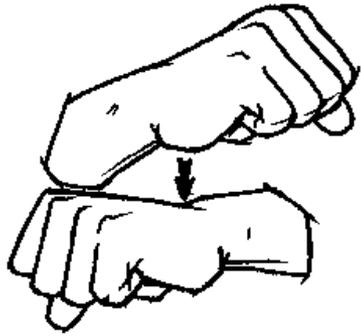
15 or more employees



Other employee
related activities



Examples of Reasonable Accommodations



ASL sign for “work”

- Changes in work schedules
- Job-aids: Reminders, checklists, or picture-based tools
- Changes in break times
- Work from home
- Voice-to-text software
- Screen readers or magnifiers
- Sign language interpreters (for key workplace interactions)
- Modified workplace policies (e.g. changing policies around drinking water at work stations)
- Changes in furniture or equipment
- Leave
- Job re-structuring
- Re-assignment to a different job

Questions?



Addiction/Substance Abuse

1. Alcoholism

2. Drug Addiction

The faces of addiction



The faces of addiction



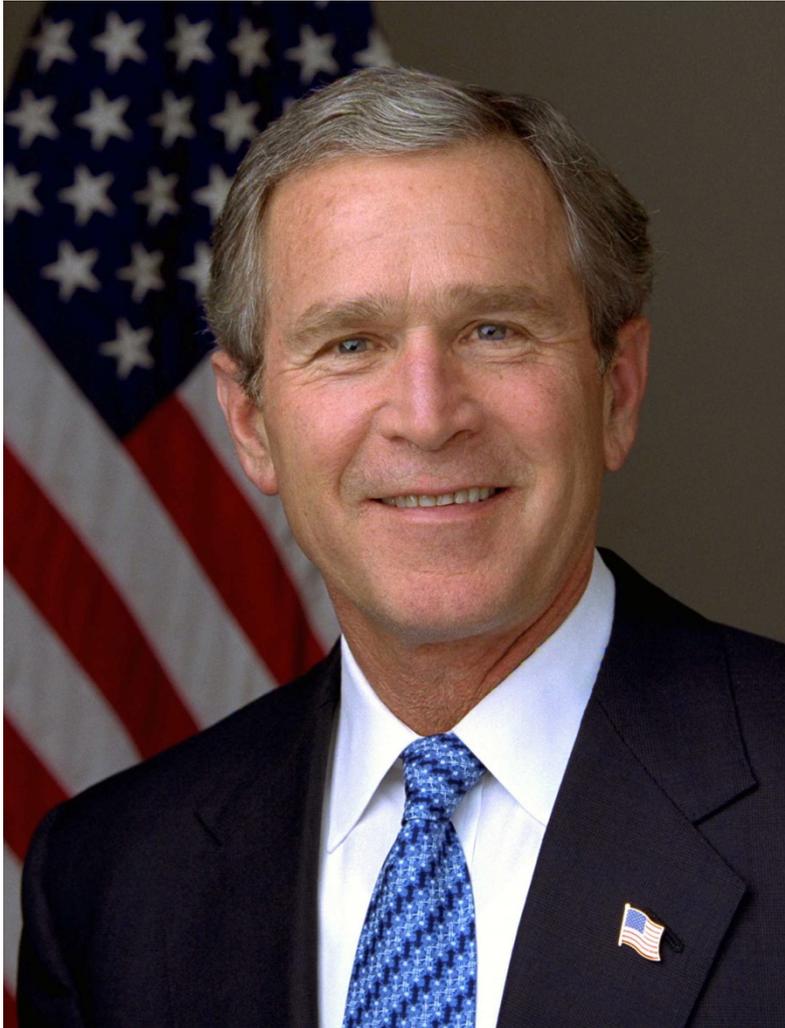
The faces of addiction



The faces of addiction



The faces of addiction



Addiction: Alcoholism

Alcohol Dependence

Four major symptoms:

1. Craving
2. Loss of control
3. Physical dependence
4. Anxiety

Addiction: Alcoholism

Does an employer have to allow use of alcohol at work as an accommodation?

No!

Addiction: Alcoholism

Are tests for alcohol use considered medical tests under ADA?

Yes. Blood, urine, and breath analyses to check for alcohol use are considered medical exams, and therefore are subject to ADA limitations.

EEOC Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act

<https://www.eeoc.gov/policy/docs/guidance-inquiries.html>

Addiction: Alcoholism

May an employer subject an employee, who has been off from work in an alcohol rehabilitation program, to periodic alcohol testing when s/he returns to work?

Yes, according to the EEOC, “but only if the employer has a reasonable belief, based on objective evidence, that the employee will pose a direct threat in the absence of periodic testing. Such a reasonable belief requires an individualized assessment of the employee and his/her position and cannot be based on general assumptions.”

EEOC Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act

<https://www.eeoc.gov/policy/docs/guidance-inquiries.html>

Addiction: Alcoholism

Scenario A

Michael is often late for work. His supervisor warns him about his 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.

Addiction: Alcoholism

Scenario A

Is Michael protected under Title I of the ADA?

Yes, he is a person with a disability (addiction to alcohol), but it is complicated. The employer does not have to withdraw the written warning nor 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. 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).

Addiction: Alcoholism

Scenario B

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.

Addiction: Alcoholism

Scenario B

How does the ADA apply?

Isabella is being regarded as having a disability, and has been negatively affected. Isabella's manager violated the ADA when he reassigned Isabella to a lower paying job.

Questions?



Drug Addiction

Drug addiction is a chronic, relapsing, and treatable disease. Addiction begins with a conscious choice to use drugs that can have long term effects on the brain's metabolism and activity.

Behavioral Characteristics:

- Absences without notification and an excessive use of sick days
- Frequent disappearances from the work site, long unexplained absences, improbable excuses
- Unreliability in keeping appointments and meeting deadlines
- Work performance that alternates between periods of high and low productivity
- Mistakes made due to inattention, poor judgment, and bad decisions
- Confusion, memory loss, and difficulty concentrating or recalling details and instructions

Substance Abuse: Drug Addiction/Alcoholism

Does the ADA protect employees with substance abuse problems?

- The ADA may protect a “qualified” alcoholic who can meet the definition of “disability.”
- The ADA does not protect an individual who currently engages in the illegal use of drugs,⁸² but may protect a recovered drug addict who is no longer engaging in the illegal use of drugs.
- The same performance and conduct standards as all other employees.

Substance Abuse: Drug Addiction/Alcoholism

Scenario C

- An employer has warned an employee several times about her tardiness. The next time the employee is tardy, the employer issues her a written warning stating one more late arrival will result in termination. The employee tells the employer that she is an alcoholic, her late arrivals are due to drinking on the previous night, and she recognizes that she needs treatment.

Substance Abuse: Drug Addiction/Alcoholism

Scenario C

- Does the employer have to rescind the written warning?
- Does the employer have to modify the employee's schedule as a reasonable accommodation?
- Reasonable Accommodation - Leave

Substance Abuse: Drug Addiction/Alcoholism



Key Distinction

- An employee whose poor performance or conduct is attributable to the **current illegal use of drugs is not covered under the ADA**. Therefore, the employer has no legal obligation to provide a reasonable accommodation and may take whatever disciplinary actions it deems appropriate. The ADA protects a **recovered** drug addict who is no longer engaging in the illegal use of drugs.
- By contrast, an employee whose poor performance or conduct is attributable to **alcoholism may be entitled to a reasonable accommodation**, separate from any disciplinary action the employer chooses to impose and assuming the discipline for the infraction is not termination.

Drug Addiction

Scenario A2

Michael is often late for work. His supervisor warns him about his 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 cocaine. He says his late arrivals are due to his drug use and that he needs immediate time off for treatment.

Addiction: Alcoholism

Scenario A2

Is Michael protected under Title I of the ADA?

No

Substance Abuse: Drug Addiction/Alcoholism

May an employer discipline an employee who violates a workplace policy that prohibits the use of alcohol or the illegal use of drugs in the workplace?

- The ADA specifically permits employers to prohibit the use of alcohol or the illegal use of drugs in the workplace.
- An employee who violates such policies, even if the conduct stems from alcoholism or drug addiction, may face the same discipline as any other employee.

Substance Abuse: Drug Addiction/Alcoholism

Scenario D

- An Amazon delivery truck driver is involved in an accident while making a Prime delivery. He is charged with driving under the influence of alcohol (DUI). Approximately one month later, the employee receives a termination notice stating that his conduct makes it inappropriate for him to continue in his job. The employee states that this incident made him realize he is an alcoholic and that he is obtaining treatment, and he seeks to remain in his job.

Substance Abuse: Drug Addiction/Alcoholism

Scenario D

- Can the employer terminate the driver?



Questions



Accommodation Ideas



Questions to Consider

- What limitations is the employee experiencing?
- How do these limitations affect the employee and the employee's job performance?
- What specific job tasks are problematic as a result of these limitations?
- What accommodations are available to reduce or eliminate these problems? Are all possible resources being used to determine possible accommodations?
- Has the employee been consulted regarding possible accommodations?
- Once accommodations are in place, would it be useful to meet with the employee to evaluate the effectiveness of the accommodations and to determine whether additional accommodations are needed?
- Do supervisory personnel and employees need training?

Last Chance

An employer may choose to offer a “firm choice” or “**last chance agreement**” to an employee who otherwise could be terminated for poor performance or misconduct that results from alcoholism or drug addiction. Generally, under a “firm choice” or “last chance agreement” an employer agrees not to terminate the employee in exchange for an employee’s agreement to receive substance abuse treatment, refrain from further use of alcohol or drugs, and avoid further workplace problems. A violation of such an agreement usually warrants termination because the employee failed to meet the conditions for continued employment.

Employee Assistance Program (EAP)

The employer may suggest that the employee seek help from the EAP.



Disability Leave

Time off for counseling, rehabilitation programs, support groups, or an on-going self-help program.



Other Accommodations

- Alternative Lighting
- Cubicle Doors, Shields, and Shades
- Electronic Organizers
- Environmental Sound Machines / Tinnitus Maskers / White Noise Machines
- Noise Canceling Headsets
- Sound Absorption and Sound Proof Panels
- Task Separation
- Telework, Work from Home, Working Remotely
- Support Animal
- Checklists
- Color Coded System

Resources

1. Southwest ADA Center

<http://www.southwestada.org/>

2. Job Accommodation Network

<https://askjan.org/>

3. Equal Employment Opportunity Commission

<http://www.eeoc.gov/>





Questions?

Contact Us:

- 1-800-949-4232
- Email: swdbtac@ilru.org
- Visit us on the web:
<http://www.southwestada.org>

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