

**“KNOW YOUR RIGHTS”
Training on the Legal Rights and Responsibilities of
People with Alcohol and Drug Problems**

**Colorado Laws Regarding Discrimination
(October 2006)**

I. The Basics

Q1. Does Colorado have a State law, like the Federal laws discussed in the *Know Your Rights* brochure, that protects people from discrimination because they have a history of alcohol or drug problems, or are in treatment or in recovery from these problems?

A1. Yes. Colorado has laws that prohibit discrimination against individuals on the basis of disability. We will refer to these laws in this summary as the Colorado anti-discrimination laws.

The Colorado Civil Rights Division (CCRD) is the agency charged with enforcing Colorado’s anti-discrimination laws pertaining to employment, housing, public accommodations and discriminatory advertising. The CCRD is assigned the responsibility of investigating claims of civil rights violations. It is also charged with the responsibility of training residents on proper employment and housing practices.

- The Colorado Civil Rights Division enforces –
 - Colorado Revised Statutes (“CADA”) § 24-34-402, which makes it unlawful for an employer to discriminate against any individual on the basis of a disability;
 - Colorado Revised Statutes § 24-34-601, which makes it unlawful for a place of public accommodation to discriminate against any individual on the basis of a disability; and the
 - Colorado Fair Housing Act (“CFHA”) § 24-34-502, which prohibits housing discrimination based on a disability.

Q2. Are people with **alcohol or drug problems** considered individuals with a “disability” protected from discrimination under Colorado laws?

A2. Yes, though the protections vary somewhat depending on the type of discrimination.

Q3. Do Colorado’s laws define “**disability**” the same way as the Federal non-discrimination laws?

A3. Yes. While there are no administrative or court decisions to support this, the CCRD interprets CADA to include the protections provided by the federal American with Disabilities Act (ADA).

- The sections of CADA which prohibit employment discrimination and discrimination by a place of public accommodation, define a “disability” as a physical or mental impairment which substantially limits one or more of a person's major life activities and includes a record of such an impairment and being regarded as having such an impairment (Colo. Rev. Stat. § 24-34-301). “**Mental impairment**” includes any mental or psychological disorder, which the CCRD interprets to include drug and alcohol problems. Additionally, the CCRD goes further and includes current illegal drug users who are enrolled in a drug treatment program.
- The CFHA, which prohibits housing discrimination, mirrors federal law in that it defines “disability” to include alcoholism and past drug use but specifically excludes persons currently involved in the illegal use of or addiction to a controlled substance (Colo. Rev. Stat. § 24-34-402).

II. Colorado Anti-Discrimination Act

Q4. In what areas of life does Colorado’s Anti-Discrimination Act protect individuals from discrimination because of their disability?

A4. Colorado’s Anti-Discrimination Act extends to:

- Employment
- Housing (under the Colorado Fair Housing Act)
- Public Accommodations
- Discriminatory Advertising

Employment Colorado Anti-Discrimination Act (“CADA”) Colo. Rev. Stat. § 24-34-401 *et. seq.*

Q5. Who does CADA protect from disability-based employment discrimination?

A5. CADA’s employment provisions make it illegal for an employer covered by the law to deny employment to, or otherwise discriminate in employment against, an individual on the basis of a past, current or perceived disability unless: there is no

reasonable accommodation that the employer can make, the disability actually disqualifies the person from the job, and the disability has a significant impact on the job.

Q6. What employers are covered by CADA?

A6. CADA defines “employer” as the state of Colorado or any political subdivision, commission, department, institution, or school district, and every other person employing persons within the state, except religious institutions.

Q7. Are all employees covered by CADA?

A7. All employees are covered, except persons employed in the domestic service of another person.

Q8. Are the employment discrimination provisions like those of the Federal laws explained in *Know Your Rights*?

A8. Yes, in most respects, CADA adopts the same standards and follows the same basic rules that the Rehabilitation Act and the ADA establish:

- Definition of what constitutes unlawfully discriminatory employment policies and practices, in regard to hiring, firing, and the terms and conditions of employment
- Reasonable accommodation requirements

Q9. What types of reasonable accommodations should an employer expect to make for a person in treatment or otherwise in recovery from an alcohol or drug problem?

A9. Like the Federal laws, CADA requires employers to make reasonable accommodations for employees with a disability. CADA does not, however, define what is a “reasonable accommodation.” Examples of reasonable accommodations in other jurisdictions are: job restructuring; modified work schedules; and permitting an employee to use paid or unpaid sick leave, disability leave or medical leave.

Q10. Can employers make inquiries about an applicant’s criminal history?

A10. Yes, employers may make inquiries about an applicant’s criminal history. However, according to West’s Colorado Practice Series, employers are discouraged from asking applicants about their criminal records unless the inquiry relates to a bona fide occupational qualification (*See* 16 Colo. Prac., Employment Law & Practices § 1.14).

However, if the arrest record or criminal history is sealed, it may not be released to an employer (Colo. Rev. Stat. Ann. § 24-72-308(1)(f)).

Colorado has laws prohibiting employment discrimination against people with criminal histories. Felony convictions or other offenses involving moral turpitude may not serve as an automatic bar for public employment or licensure, with some exceptions, but may be considered in determining whether the applicant is of good moral character (Colo. Rev. Stat. Ann. § 24-5-101).

Employment-related Medical Inquiries and Examinations

Q11. Are CADA’s employment provisions regarding medical inquiries, examinations and drug and alcohol tests similar to those of the Federal laws explained in the *Know Your Rights* brochure?

A11. CADA’s employment provisions are silent as to medical inquiries and examinations. However, the CCRD’s Rules and Regulations prohibit an employer from using any employment test or other selection criteria that screens out persons with disabilities (3 Colo. Code Regs. 708-1 Rule 60.2(D)(1)). Likewise, an employer may not make pre-employment inquiries as to whether the applicant is a disabled person, or conduct a pre-employment medical examination. (3 Colo. Code Regs. 708-1 Rule 60.2(E)(1)). Therefore, while testing for illegal drugs prior to an employment offer is permissible, testing for alcohol use prior to an employment offer is not.

Drug and Alcohol Testing -- There is no Colorado state law that specifically governs drug and alcohol testing by private employers (*See* 16 Colo. Prac., Employment Law & Practices § 2.11).

Impermissible Inquiries -- With respect to inquires pertaining to alcohol and drug use, impermissible inquiries include asking about past addiction to alcohol or illegal drugs, asking about the frequency of past use of illegal drugs, and asking about an applicant’s frequency of using alcohol in the past (*See* 16 Colo. Prac., Employment Law & Practices § 1.14).

Permissible Inquiries – An employer may make pre-employment inquiries into an applicant’s ability to perform job-related functions. Permissible inquires also include asking about current use of illegal drugs, asking when an applicant last used illegal drugs, asking whether an applicant uses alcohol, and asking whether an applicant has been arrested for driving under the influence of alcohol (*See* 16 Colo. Prac., Employment Law & Practices § 1.14).

Housing Colorado Fair Housing Act Colo. Rev. Stat. § 34-34-501 *et. seq.*

Q12. Does Colorado protect people in treatment or otherwise in recovery from alcohol or drug problems from housing discrimination?

A12. Yes. Colorado’s Fair Housing Act protections are very similar to those of the federal Fair Housing Act described in the *Know Your Rights* brochure. It excludes from protection persons engaged in current illegal drug use. The CFHA:

- Prohibits housing discrimination based on disability (defined as noted above, like the Federal laws) in rental or sales of residential property and the availability of residential real estate transactions.
- Requires that landlords provide reasonable accommodations to make space livable for a person with a disability.
- The CFHA does not apply to single-family dwellings rented or sold by the owner, and housing operated by religious organizations and private clubs. (Colo. Rev. Stat. § 24-34-502(8)(a)).

Public Accommodations

CADA – Colo. Rev. Stat. § 24-34-601 *et. seq.*

Q13. Does Colorado’s anti-discrimination law also protect people with histories of alcohol or drug problems from discrimination in public accommodations?

A13. Yes. CADA prohibits disability-based discrimination by places of public accommodation (such as lodgings, hospitals, theaters, restaurants and retail stores). Violation of the public accommodation provisions of CADA is a crime punishable by a fine and imprisonment.

III. Analyzing Discrimination Claims under Colorado Law

While Colorado’s anti-discrimination laws likely protect individuals from discrimination because of drug or alcohol problems, there are no reported court decisions applying Colorado’s anti-discrimination laws to individuals with alcohol or drug problems.

IV. Remedies and Resources for Addressing Illegal Discrimination

Q14. What can I do if I think I have been discriminated against because of an alcohol or drug problem?

A14. In addition to the remedies under the federal anti-discrimination laws listed at the end of the *Know Your Rights* brochure, you may:

- File a complaint charging violations of Colorado’s anti-discrimination laws with the Colorado Civil Rights Division. The complaint must be filed within six months of the alleged discrimination in cases involving claims of discrimination by an employer. (Colo. Rev. Stat. § 24-34-403). In cases involving unlawful housing practices, individuals must file their complaints within 1 year of the alleged housing discrimination.
- You may also file a lawsuit in state court. However, in order to file in court, you must first file a complaint with the CCRD. If the agency makes an adverse determination, you have 90 days from the date of the unfavorable decision to file a lawsuit in state court. (Colo. Rev. Stat. § 24-34-306(c)(14)).
 - For violations of the Colorado Fair Housing Act, the statute creates a private cause of action which means an aggrieved person may file a lawsuit in an appropriate district court without first having to exhaust administrative remedies. The complaint must be filed within two years of the discrimination. (Colo. Rev. Stat. § 24-34-505.6).

Remember: Employment discrimination claims under Federal law:

- If you intend to file an employment discrimination lawsuit under the ADA or Rehabilitation Act, you must first file a complaint with the U.S. Equal Employment Opportunity Commission within 180 days of the alleged discrimination.
- The Denver Field Office of the U.S. EEOC is located at the Denver District Office, 303 East 17th Avenue, Suite 510, Denver, Colorado 80203., tel. (303)-866-1300, and is open Monday – Friday from 8:00am to 4:30p.m. You can only file a lawsuit after receiving a “right to sue” letter from the EEOC. You may wish to check the EEOC website, www.eeoc.gov, for more information.