

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

**Connecticut Laws Regarding Discrimination
(June 2008)**

I. The Basics

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

A1. Yes: The **Connecticut Human Rights and Opportunities Act (HROA)**, CONN. GEN. STAT. § 46a-51 *et seq.*, which includes the **Connecticut Fair Employment Practices Act (FEPA)** and the **Connecticut Fair Housing Practices Act (FHPA)**, makes it unlawful to discriminate on the basis of mental disability in employment, housing, and public accommodations. Though the Commission refers to these laws, in their entirety, as the Human Rights and Opportunities Act, many courts refer to FEPA and FHPA by their individual names.

- **FEPA** makes it illegal for an employer to discriminate against a person because of their present or past history of mental disability. CONN. GEN. STAT. § 46a-60.
- **HROA** also makes it illegal to deny a person full and equal accommodations because of mental disability at any place of public accommodation, resort, or amusement. CONN. GEN. STAT. § 46a-64.
- **FHPA** bars discrimination in the offering of housing to any buyer or renter because of that person’s mental disability or the mental disability of any person associated with that buyer or renter. CONN. GEN. STAT. § 46a-64c.
- All of Connecticut’s anti-discrimination laws are enforced by the **Connecticut Commission on Human Rights and Opportunities (CHRO)**. The CHRO receives and investigates discrimination complaints and may mediate, hold administrative hearings, or go to court in order to

resolve allegations of discrimination. CONN. GEN. STAT. § 46a-82; 46a-83.

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

A2. Yes. Connecticut law defines a person with a mental disability as one who has “a record of, or is regarded as having one or more mental disorders, as defined in the most recent edition of the American Psychiatric Association's ‘Diagnostic and Statistical Manual of Mental Disorders’” (DSM-IV). CONN. GEN. STAT. § 46a-51 (2008). The DSM-IV is a widely used manual, which identifies substance abuse, substance dependence, substance intoxication, and substance withdrawal as mental disorders. AMERICAN PSYCHIATRIC ASSOCIATION, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS 91-210 (4th ed. 2000).

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

A3. To some extent, yes. While both Federal and Connecticut laws protect people with alcohol or drug problems, there are a few differences in the scope of those protections:

- Federal laws define someone as a “disability” as an individual who has a current “physical or mental impairment” that “substantially limits” one or more of that person’s “major life activities.” 42 U.S.C. § 12102(2). Connecticut law does not require that a person’s mental disability substantially limit their major life activities. However, this distinction may not have much meaning, as many courts have held that individuals experiencing or recovering from addiction have an impairment that substantially limits major life activities.
- The Federal laws automatically exclude someone currently engaging in the illegal use of drugs from legal protection from discrimination. Connecticut laws, by contrast, do not contain any explicit exclusion of such individuals. However, because CHRO often looks to federal law to assist in the interpretation of its own anti-discrimination laws, it is likely that the CHRO or a court would disqualify someone currently engaging in the illegal use of drugs. *See Hoffman v. MCI Worldcom Communs., Inc.*, 178 F. Supp. 2d 152, 157 (D. Conn. 2001) (finding that FEPA would not protect someone engaging in use of illegal drugs at time of alleged discrimination). Also see “Analyzing Discrimination Claims under Connecticut Law,” below.

II. Connecticut's Anti-Discrimination Laws

Q4. In what areas of life do Connecticut's anti-discrimination acts protect individuals from discrimination because of their disability?

A4. Connecticut's anti-discrimination acts extend to:

- Employment (FEPA)
- Housing (FHPA)
- Public Accommodations (HROA)

Employment Connecticut Fair Employment Practices Act (FEPA)

CONN. GEN. STAT. § 46a-51 *et seq.*

Q5. Which employers are covered by FEPA?

A5. FEPA defines an employer as “the state and all political subdivisions thereof and...any person or employer with three or more persons in such person's or employer's employ.” CONN. GEN. STAT. § 46a-51(10).

Q6. Are all employees covered by FEPA?

A6. No, some employees are excluded. FEPA defines an employee as any person employed by an employer, but not including “any individual employed by such individual's parents, spouse or child, or in the domestic service of any person.” CONN. GEN. STAT. § 46a-51(9).

Q7. Are the employment discrimination provisions like those of the Federal laws explained in *Know Your Rights*?

A7. Yes, the law provides many of the same protections as the Federal laws. However, FEPA creates broad exceptions to the general bar on discrimination. Additionally, it is less clear whether Connecticut law requires employers to make reasonable accommodations for employees with disabilities. The laws are *similar* in that:

- They prevent an employer from discriminating on the basis of mental disability by refusing to hire someone or employ them because of their disability, or by providing them with lesser terms, conditions, or privileges of employment because of their disability. CONN. GEN. STAT. § 46a-60(a)(1).

The laws are *different* in that:

- Connecticut laws do not have explicit reasonable accommodation requirements (see Question 8, below).
- FEPA creates a “bona fide occupational qualification” exception to the prohibition on employer discrimination. CONN. GEN. STAT. § 46a-60(a)(1). A bona fide occupational qualification exists “only if no member of the class excluded is physically capable of performing the tasks required by the job.” *Evening Sentinel v. National Organization for Women*, 168 Conn. 26, 36 (1975). This means that if an employee or former employee charges an employer with discrimination, the employer may defend itself by saying its actions towards the employee were justified by a bona fide occupational qualification.

Q8. 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?

A8. Unlike the Federal laws, Connecticut law does not explicitly require employers to make reasonable accommodations for disabled employees. Several Connecticut courts have nonetheless found that employers have a duty to provide reasonable accommodations. *Curry v. Allan S. Goodman, Inc.*, 286 Conn. 390, 405, 415 (2008). The CHRO has likewise interpreted the law to require that employers provide reasonable accommodations. *Id.* at 405.

Employment-Related Medical Inquiries and Examinations

Q9. Are FEPA’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?

A9. No. With respect to **medical inquiries and examinations**, FEPA is silent except for a provision that states that employers are not prohibited from requiring their employees receive medical examinations for the purpose of determining their physical qualification for continued employment. CONN. GEN. STAT. § 46a-60.

With respect to **drug and alcohol testing**, Connecticut laws provide more protections than the Federal laws, but are not as protective of employee privacy:

- **Pre-Employment Drug and Alcohol Testing.** Employers may not require prospective employees to submit to drug test as part of the application for employment unless (1) the prospective employees are informed in writing at the time of application of the employer's intent to conduct such a drug test, (2) any positive test result is confirmed with a more advanced technology (see “Positive Results,” below), and (3) the

prospective employee is given a copy of any positive drug test result.
CONN. GEN. STAT. § 31-51v.

- **Employment Drug and Alcohol Testing.** In general, employers are prohibited from requiring an individual employee to submit to a drug test. However, an employer may require an individual to submit to a drug test if the employer has reasonable suspicion that the employee is under the influence of drugs or alcohol, which adversely affects or could adversely affect such employee's job performance. CONN. GEN. STAT. § 31-51x(a). An employer may not utilize random drug testing, unless: (1) it is authorized under federal law; (2) the employee is working in a high-risk or safety-sensitive occupation; or (3) it is conducted as part of an employee assistance program in which the employee voluntarily participates. § 31-51x(b).
- **Confidentiality.** The results of any test administered to a prospective employee shall be confidential and shall not be disclosed *other than* to any employee to whom such disclosure is necessary. CONN. GEN. STAT. § 31-51v (emphasis added). An employer may not disclose drug testing results without permission of the employee, unless disclosure is in response to a medical emergency or required by law. § 31-128f. They are inadmissible in any criminal proceeding. § 31-51w(b).
- **Positive Results.** An employer may base promotion, additional compensation, transfer, termination, disciplinary or other adverse personnel action on the positive results of a drug test, but only after administering a reliable urinalysis test and confirming it with a second test using gas chromatography and mass spectrometry methodology, or a methodology which has been determined by the Commissioner of Public Health to be as reliable or more reliable than the gas chromatography and mass spectrometry methodology. CONN. GEN. STAT. § 31-51u(a).

Housing & Public Accommodations
Connecticut Human Rights & Opportunities Act (HROA)
CONN. GEN. STAT. § 46A-64 et seq.

Q10. Are the housing and public accommodation anti-discrimination provisions like those of the Federal laws explained in *Know Your Rights*?

A10. Yes, they are very similar. The HROA:

- makes it unlawful to represent to any person that “any dwelling is not available for inspection, sale or rental when such dwelling is in fact so available” because of that person’s mental disability. CONN. GEN. STAT. §

46a-64c(a)(4)(A).

- prohibits disability-based discrimination in the sale or rental of a dwelling, or in the terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling, because of a learning disability or physical or mental disability of: (i) the buyer or renter; (ii) a person living in or intending to live in the dwelling; or (iii) any person associated with the buyer or renter. CONN. GEN. STAT. § 46a-64c(a)(6)(A), (B).
- prohibits the denial of full and equal access to public accommodations or places of resort or amusement because of mental disability. CONN. GEN. STAT. § 46a-64(a).

III. Analyzing Discrimination Claims under Connecticut Law

Connecticut courts often look to federal court interpretation of federal anti-discrimination law in interpreting state anti-discrimination law. *See Williams v. Comm'n on Human Rights & Opportunities*, 257 Conn. 258, 278 (2001) (“Although we are not bound by federal interpretation of Title VII provisions, ‘[w]e have often looked to federal employment discrimination law for guidance in enforcing our own antidiscrimination statute.’” (quoting *State v. Comm’n on Human Rights & Opportunities*, 211 Conn. 464, 470 (1989))). As a result, courts may rely on federal law when state law is ambiguous or silent.

IV. Remedies and Resources for Addressing Illegal Discrimination

Q11. What can I do if I think I have been discriminated against because of an alcohol or drug problem?

A11. In addition to the remedies under the federal anti-discrimination laws listed at the end of the *Know Your Rights* brochure, state remedies include:

- Any person who feels they have been discriminated against may file a complaint with the Connecticut Commission on Human Rights and Opportunities. CONN. GEN. STAT. § 46a-82. Generally, claims must be received within 180 days of the discriminatory act, or 180 days of the date the complaining person first becomes aware of the discrimination. Claims must be filed in writing and under oath. Connecticut Commission on Human Rights and Opportunities, *How to File a Complaint*, <http://www.ct.gov/chro/> (click on “Discrimination Complaints,” then “How do I file a Discrimination Complaint?”).

- The CHRO will review the complaint to determine whether it is appropriate for further action, which may include a mediation session between the parties, a fact-finding conference, or a full investigation. CONN. GEN. STAT. § 46a-83(b), (c). Once an investigation is complete, the CHRO will make a finding of reasonable cause or no reasonable cause to believe that discrimination occurred. § 46a-83(d)(1). If a determination of reasonable cause is made, the CHRO will work with the parties to eliminate the discrimination and make the complaining party whole. § 46a-83(f); Connecticut Commission on Human Rights and Opportunities, The Complaint Process, <http://www.ct.gov/chro/cwp/view.asp?a=2524&q=315892>.
- If a case cannot be resolved through voluntary cooperation with the CHRO, an administrative hearing will be held to determine whether discrimination occurred, and to resolve any such discrimination through an order of a Human Rights Referee. CONN. GEN. STAT. § 46a-84. If the discrimination alleged is housing discrimination, either party may elect to have their case resolved through a civil action brought in court by the CHRO, instead of through an administrative hearing. CONN. GEN. STAT. § 46a-83(d)(2).

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 (“EEOC”) within 180 days of the alleged discrimination.
- There are EEOC offices in Boston, Buffalo, New York City, and Newark. The New York District Office is located at 33 Whitehall Street, New York, New York 10004, phone (800)669-4000, and is open Monday – Friday from 8:30 a.m. through 5:00 p.m., and intake hours are Monday – Friday from 8:30 am through 3:00 pm. 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.