

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

Illinois Laws Regarding Discrimination
(September 2006)

The Basics

Q1. Does Illinois have a state law, like the federal laws 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. Illinois has a law that prohibits discrimination on the basis of disability (“physical or mental handicap”) called the **Illinois Human Rights Act** (“HRA”), 775 Ill. Comp. Stat. Ann. 5/1-101 *et seq.* [Note: The HRA also forbids discrimination based on race, color, religion, sex, national origin, ancestry, age, marital status, military status, sexual orientation, or unfavorable discharge from military service.] The HRC was signed into law in 1979 by Governor James Thompson, for whom the James R. Thompson Center is named.

The HRA sets up a two-part enforcement apparatus:

The **Illinois Department of Human Rights** (IDHR) is the state administrative agency responsible for enforcing the HRA. It accepts, investigates, and addresses complaints alleging discrimination in violation of the HRA. See the IDHR’s informational brochures in the handouts and the Department’s website at <http://www.state.il.us/dhr>.

The **Illinois Human Rights Commission** (IHRC) is the state administrative agency responsible for adjudicating complaints after they have been investigated by the IDHR.

The HRA’s coverage of individuals with disabilities is generally very similar to the federal disability discrimination laws. Knowing how the federal laws, especially the **Rehabilitation Act** (“Rehab Act”) and the **Americans with Disabilities Act** (ADA), apply in cases involving discrimination based on alcohol or drug problems, can be a useful guide to understanding how the HRA has been interpreted, or is likely to be interpreted in future cases.

Regulations that implement the HRA and concern both the IDHR and IHRC can be found in the Illinois Administrative Code, Title 56, Part 2500 *et seq.*

Q2. Are people with **alcohol or drug problems** considered individuals with a disability protected from discrimination by the HRA?

- A2.** Yes, in some cases. Although the HRA explicitly excludes from protection individuals who are **currently** engaging in the illegal use of drugs or alcohol, there are circumstances under which a person with a **past history** of drug or alcohol abuse would be covered.

For example, a job applicant or employee of an employer covered by the HRA (see “Which Employers Are Covered?” below) is protected if he or she:

- has successfully completed a supervised rehabilitation program or has otherwise been rehabilitated successfully and is no longer using illegal drugs, *or*
- is participating in a supervised rehabilitation program and is no longer using illegal drugs, *or*
- is incorrectly regarded as engaging in illegal drug use
- however, amount of time since last use of illegal drugs may be an issue (i.e. very recent drug use, even if person is in treatment, may bar HRA coverage).

Consistent with the ADA, Illinois regulations implementing the HRA state that in order to qualify as a handicap under the law, the condition of past alcohol or drug abuse must:

- arise from or constitute the equivalent of a disease or functional disorder, *and*
- be *unrelated* to the person’s ability to perform the job in question. (Note: a person’s alcoholism or drug dependence that results in excessive absence or tardiness, or intoxication at work, is presumed to be *related* to the person’s ability to perform the job in question.)

- Q3.** Does the HRA define “**disability**” the same way as federal non-discrimination laws?

- A3.** Not quite. The Illinois definition of “**mental or physical handicap**” is slightly different than the definition of “disability” used in the ADA and the Rehabilitation Act.

Unlike the ADA, the HRA does NOT require that an employee have a “substantial limitation” of a “major life activity” in order to be considered “handicapped.”

Under the HRA, “**handicap**” means a determinable physical or mental characteristic of a person, including, but not limited to:

- a determinable physical characteristic which necessitates the person's use of a guide, hearing or support dog
- the history of such characteristic, or
- the perception of such characteristic by the person complained against
- which may result from disease, injury, congenital condition of birth or functional disorder
- and which characteristic is *unrelated* to
 - the person's ability to perform the duties of a particular job or position (regarding HRA employment provisions)
 - the person's ability to acquire, rent, or maintain a housing accommodation (regarding HRA housing provisions)
 - a person's ability to repay (regarding HRA financial credit provisions), or
 - a person's ability to utilize and benefit from a place of public accommodation (regarding HRA public accommodations provisions).

To be covered, a condition must be "determinable" by recognized clinical or laboratory diagnostic techniques. Consistent with federal law, the HRA definition of "handicap" excludes conditions which are "transitory and insubstantial," and "conditions which are not significantly debilitating or disfiguring."

The burden is on the person claiming the handicap to establish that the condition results from disease, injury, congenital condition of birth or functional disorder.

Consistent with the ADA, a person is covered by the HRA's "handicap" provisions if he is currently afflicted with a condition that constitutes a handicap, has a history of affliction with such a condition, or is perceived as being or having been so afflicted. Whether a particular person has a "handicap" within the meaning and coverage of the HRA is determined on a case-by-case basis.

Again, under the HRA, a person's current illegal use of drugs is **not** a handicap.

The HRA's Protections Against Discrimination

- Q4.** In what areas of life does the HRA protect individuals from discrimination because of their disabilities?

- A4.** The HRA prohibits discrimination in connection with *employment, housing (real estate transactions including renting and sale of housing), access to financial credit, and availability of public accommodations*. [Note: The HRA also prohibits sexual harassment in employment, sexual harassment of students in institutions of higher education, and retaliation.]

Employment

- Are the HRA’s employment discrimination provisions like those of the federal laws explained in the “Know Your Rights” brochure?

Yes, in most respects, the HRA adopts the same standards and follows the same basic rules that the Rehabilitation Act and the ADA establish. The HRA is very similar to federal laws in terms of what constitutes unlawfully discriminatory employment policies and practices in regard to hiring, firing, and the terms and conditions of employment. Its reasonable accommodation requirements are also similar to those embodied in federal law.

- Who does the HRA protect from disability-based employment discrimination?

The HRA makes it illegal for any employer covered by the law to discriminate on the basis of an individual’s past, current, or perceived disability in all terms and conditions of employment, including recruitment, hiring, firing, layoff, harassment, selection, promotion, demotion, performance evaluation, transfer, pay, tenure, discipline, and privileges.

- Which employers are covered by the HRA?

- Generally, Illinois employers with 15 or more employees, labor organizations, and public and private employment agencies.
- **Employers of one or more persons, if a charge alleges discrimination on the basis of physical, mental or perceived handicap, or sexual harassment.**
- Employers of one or more persons if the employer is a public contractor doing business with the state, a joint apprenticeship training committee, a public employer, or is an eligible bidder for a public contract.

The HRA also makes it illegal to “aid and abet” discrimination, so that a claim may be raised against *any person* who helped cause the discrimination to happen (not just an employer or its employees, for example).

- Are all employees in Illinois protected?

Most of them are, but the term “employee” does not include domestic servants in private homes, individuals employed by persons who are not “employers” as defined by the Act, elected public officials or the members of their personal staffs, principle administrative officers of the state or of any political subdivision, or a person in a vocation rehabilitation facility certified under federal law who has been designated an evaluatee, trainee, or work activity client.

- When are employees protected by the HRA?

- To be protected by the HRA, people with drug and alcohol related conditions must possess the necessary qualifications for the job and be capable of performing its basic functions, with or without a reasonable accommodation.
- Discrimination can not be justified based on the real or suspected implications of a person’s physical or mental condition if they do not affect the person’s ability to acceptably perform the job or only affect the person’s ability to perform tasks or engage in activities that are apart from or only incidental to the job.
- However, a person’s condition is related to his or her ability if it would make employment of the person in the particular position demonstrably hazardous to the health or safety of the person or others, or if it is manifested or results in behavior which fails to meet acceptable standards. **Reasonable accommodation** of a person’s physical or mental limitations must be explored to determine whether the condition prevents acceptable or safe performance of the activities necessary to the job.
- Employers may hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior that such employer holds other employees, even if any unsatisfactory performance or behavior is related to or caused by the employee’s drug use or alcoholism.

- Are the HRA’s provisions regarding medical inquires and examinations and drug and alcohol tests similar to those of the federal laws explained in the “Know Your Rights” brochure?

Yes, in some respects, although the HRA differs somewhat from the ADA and the Rehabilitation Act regarding medical inquiries and examinations and drug and alcohol tests.

Inquiries:

- An employer may not require a job applicant to list or disclose all disabling conditions with which the applicant is afflicted but may inquire uniformly of all applicants whether they have physical or mental handicaps that may impair their ability to perform the position being sought. This is consistent with federal law.
- Employers may ask questions concerning a person's history of alcohol or drug dependence after making a conditional offer of employment. This is consistent with federal law.
- An employer cannot ask about arrests or criminal history record information that has been expunged or sealed. Federal law is silent on the issue of criminal record history.

Examinations:

- Generally, the HRA prohibits an employer from asking a person to submit to a pre-employment physical or psychological examination unless a conditional job offer already has been made. This is consistent with federal law.
- However, an employer can require a person to submit to a pre-employment physical or psychological examination even before a conditional employment offer is made if the practice is followed consistently with all applicants and if it can be demonstrated that each subsequent evaluative procedure is more expensive or burdensome than the physical or psychological examination. This is different than the ADA and Rehab Acts, which do not permit these examinations before a conditional job offer is made.
- An employer may require all applicants who have been found otherwise qualified for selection to submit to pre-employment physical or psychological examinations, for the purpose of determining whether such applicants are capable of acceptably performing the activities necessary to the job or training at issue. Such examinations may also be utilized to ascertain the nature of any accommodation which may be needed to enable the applicant to perform acceptably, but not to disqualify applicants who are revealed as having a condition or characteristic which merely presents a risk of future injury. This is consistent with federal law.
- In all events, however, the results of any such pre-employment examination must be made available to the applicant, upon request. The ADA and Rehab Act are silent on this issue.

Under the HRA, as is true under the ADA and Rehab Act, a test to determine the illegal use of drugs is *not* considered a medical examination. Employers can administer tests to detect illegal drugs, regardless of whether a conditional job offer has been made, if they require that all applicants for the job undergo the same test.

Real Estate Transactions and Housing

- The HRA also prohibits unlawful discrimination in the sale or rental of residential or commercial property. This includes refusing to rent or sell to people with disabilities, altering the terms, conditions, or privileges of sale or rental of a dwelling because of a person's disability, and refusing to make or permit reasonable accommodations needed by persons with disabilities to enjoy the dwelling. It also forbids oral statements indicating intent to discriminate and restrictive covenants on the basis of disability. The law is similar in many ways to the federal Fair Housing Amendments Act (FHAA) (which in 1988 expanded the coverage of the Fair Housing Act to prohibit discrimination on the basis of disability or familial status, among other things).
- The HRA provides an exemption for certain single family homes, owner-occupied apartment buildings, rental of rooms in a private home, and for religious organizations.
- Although HRA prohibits discrimination on the basis of handicap, housing providers do not have to make dwellings available to a disabled person if that person poses a direct threat to the health or safety of other persons or if s/he would cause substantial physical damage to the property of others.
- In addition, persons who have been convicted of illegal manufacture or distribution of drugs can be excluded by housing providers.
- Some municipalities have their own fair housing ordinances (*see* Chicago and Cook County, below, as examples) that may provide even stronger protections against discrimination than those found in the HRA. Many municipalities also have Fair Housing or Human Relations Commissions that have the power to investigate claims and enforce both local ordinances and the HRA. You should contact your municipal government headquarters (e.g. City Hall) to learn whether your municipality has its own ordinance or commission.
- If you are successful in your claim of real estate/housing discrimination before the IHRC, the IHRC may award punitive damages in addition to the remedies discussed in the "Remedies and Resources" section below.

Financial Credit

- The HRA prohibits all financial institutions doing business in the State of Illinois from discriminating on the basis of disability in the granting, withholding, or terms or conditions of mortgage and personal loans, or loans for commercial or industrial purposes. Covered financial institutions include banks, credit unions, mortgage companies and credit card issuers who operate their business in Illinois and/or have a branch office in Illinois
- Under the HRA, a financial institution cannot ask a loan or credit applicant whether s/he has a disability. However, an institution *may* ask about the nature of an applicant's condition if the loan application shows that s/he receives income on the basis of disability or if s/he applies for credit insurance. This is so because financial institutions are allowed to apply sound underwriting practices when decided whether to make a loan or extend credit, which can include consideration of a person's ability to repay the loan and that person's credit history.
- If you are successful in your claim of credit discrimination before the IHRC, the IHRC may order that the financial institution grant you full and equal use and enjoyment of their services, in addition to the remedies discussed in the "Remedies and Resources" section below.

Public Accommodations

- The HRA makes it unlawful to discriminate on the basis of disability in the full and equal enjoyment of facilities and services by any place of public accommodation, such as a business, recreation, lodging, entertainment, or transportation facility that is open to the public. It also provides Illinois residents with rights of equal access to government facilities and to services provided by public officials. In addition, it prohibits publication or display of any material that would communicate that any disabled person is unwelcome.
- The HRA's definition of public accommodations is similar to that of the ADA. However, unlike the ADA's definition, it includes *all* transportation facilities, but *excludes* services provided by doctors and lawyers. As with the ADA, private clubs and religious organizations are not covered.
- If you are successful in your claim of public accommodation discrimination before the IHRC, the IHRC may order that the place of public accommodation or government entity to provide you with full and equal enjoyment of its goods, facilities or services.

Analyzing Discrimination Claims under the HRA

- Q5.** What is, and is not, likely to be considered illegal discrimination under the HRA in cases involving people with alcohol or drug problems?

A5. In deciding cases where individuals are alleging disability-based discrimination in violation of the HRA, both Illinois courts and the IDHR commonly consider these general issues:

- Whether the alleged discrimination was based on the individual’s status as a person with a disability protected by law (i.e. whether it was motivated by the individual’s disability itself) or whether it was based on the individual’s conduct.
 - Acting against a person because of his or her *status* as someone with a disability may be unlawful discrimination under both the HRA and federal laws. Individuals subjected to discrimination just because they have a history of, or are in treatment or otherwise in recovery from, alcohol or drug addiction may have valid claims under the HRA and federal laws.
 - Acting against someone because of his or her *conduct* is not likely to be considered unlawful discrimination in violation of the HRA or federal laws, even if that conduct is caused by, or linked or related to, the person’s disability. It is generally not unlawful discrimination to take action against someone based on the individual’s misconduct, such as violating uniformly applied rules or policies, including those relating to alcohol or drug use.
- Whether the individual is *qualified* for the job or services. It generally would not violate these laws to deny someone a job because he or she is not qualified or is unable – even with reasonable accommodations – to satisfactorily perform the essential functions and duties of the job, or to deny someone services, government benefits, or programs because he or she does not meet the eligibility requirements for participation even if s/he is disabled.
- Whether an employer is required to provide a reasonable accommodation to a disabled applicant or employee, and what precisely is “reasonable” under the circumstances.
- Whether people with disabilities are generally being treated less favorably than others.

Additional Protection in Chicago

Q6. Are there other laws that protect people from discrimination in Chicago?

A6. Yes, the City of Chicago has its own **Chicago Human Rights Ordinance** (“City Ordinance”) which applies to any employer with one or more employees in the City of Chicago.

- The City Ordinance prohibits discrimination against an individual in any term or condition of employment based on an individual’s disability. Employers *can*, however, reject a person with a disability based on evidence that the individual would be “demonstrably hazardous to the health or safety of that person or others, or that such employment would result in behavior or production below acceptable standards applied to all other employees.”
- The City Ordinance’s definition of disability is almost identical to the Illinois Human Rights Act’s definition of “handicap.” “Disability” means (1) a determinable physical or mental characteristic which many result from disease, injury, congenital condition of birth or functional disorder including, but not limited to, a determinable physical characteristic which necessitates a person’s use of a guide, hearing or support dog; or (2) the history of such a characteristic, or (3) the perception of such a characteristic by the person complained against. The definition includes physical or mental impairments that substantially limit one or more of the major life activities of a person, such as caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.
- The City Ordinance prohibits an employer from requiring a job applicant to disclose a disability prior to being hired unless the employer can demonstrate that the inquiry is related to a bona fide occupational qualification.
- It is unclear whether the City Ordinance’s definition of “disability” would cover *current* drug or alcohol abuse because the city law, unlike the state law, does not address this issue. However, the **Chicago Commission on Human Relations**, the agency responsible for enforcing the City Ordinance, has indicated that *past* history of drug or alcohol abuse could qualify as a disability. As with the Illinois Human Rights Act, coverage of persons with a history of drug or alcohol abuse must be determined on a case-by-case basis.

Additional Protection in Cook County

Q7 Are there other remedies available to people who work in Cook County?

A7 Yes. Cook County also has its own **Human Rights Ordinance** (“**County Ordinance**”), which prohibits disability-based discrimination in hiring, compensation, discipline, and any other condition of employment in Cook County. The County Ordinance is enforced by the Cook County Commission on Human Rights.

- The County Ordinance applies to any individual with one or more employees if its principal place of business is in Cook County or the employer does business in Cook County. Public employers (federal, state, and local) are *not* covered under the County Ordinance. The County Ordinance applies to employment that takes place in Cook County, as well as discrimination that occurs in Cook County.
- The County Ordinance, like federal law, defines “disability” as (1) a physical or mental impairment that substantially limits one or more of the major life activities of an individual; (2) a record of such an impairment; or (3) being regarded as having such an impairment.
- This definition *explicitly excludes* impairments relating to the illegal use, possession or distribution of controlled substances. The County Ordinance does not directly address coverage of persons with current alcohol problems or histories of drug dependence or alcoholism. The Cook County Commission on Human Rights has not issued any decisions on this issue.

Unlike the City Ordinance, the County Ordinance does not directly address the issue of whether an employer can require a job applicant to disclose a disability prior to being hired.

Remedies and Resources for Addressing Illegal Discrimination

Process before Administrative Agency

Q8. What can I do if I think I have been discriminated against because of my past drug problem or past or current alcohol problem?

A8. In addition to remedies under the federal anti-discrimination laws listed at the end of the blue and white “Know Your Rights” brochure, if you live in Illinois, or if the alleged discrimination occurred in Illinois, you have certain options.

- There is no “private right of action” under Illinois law for discrimination claims under the HRA, which means that individuals cannot file a discrimination lawsuit in court under Illinois law. You must file a claim with the **Illinois Department of Human Rights** (“IDHR”) in order to pursue a discrimination claim under the HRA. If the IDHR finds “substantial evidence” or misses certain time limits, you can pursue your claim before the **Illinois Human Rights Commission** (IHRC”), but not in court. You can, however, bring a lawsuit to enforce a decision of the IHRC. If the HRA fails to act on your complaint and fails to either file a complaint with the IHRC or dismissed your charge within 365 days after you filed it, you have 30 days in which to file a complaint with the IHRC yourself. You can not file after this “30-day window” is closed.

- To initiate a discrimination claim under the HRA, you must file a charge with the IDHR within *180 days* of the date on which the discrimination took place in all cases *except* housing (one year filing deadline). Information on this process is included in the handouts and is available on the Department's website at <http://www.state.il.us/dhr/>, or by telephone at (312) 814-6200.
- After you file a *charge*, the IDHR then performs an investigation. If the IDHR decides that there is substantial evidence to support the charge, the IDHR files a *complaint* with the IHRC.
- Individuals who are employed in Cook County or are discriminated against in Cook County may file a complaint with the **Cook County Commission on Human Rights** claiming a violation of the Cook County Human Rights Ordinance. A written complaint must be filed within 180 days of the last date of the violation. Information is available on the website, <http://www.cityofchicago.org/HumanRelations/>, or by telephone, (312) 744-4111.
- If a discriminatory act occurs in the city of Chicago, an individual may file a complaint with the **City of Chicago Commission on Human Relations** alleging a violation of the Chicago Human Rights Ordinance. A complaint must be filed within 180 days from the date of the Ordinance violation. Information is available on the website, <http://www.co.cook.il.us/agencyDetail.php?pAgencyID=3>, or by telephone, (312) 603-1100.

Administrative Remedies

- If you are successful in your discrimination claim before the IHRC, the IHRC may issue:
 - a *cease and desist* order directing entity you complained against to stop engaging in prohibited discrimination.
 - an order requiring the party engaging in prohibited discrimination to *do something*. In an employment discrimination case, for example, it may direct the employer to take whatever action necessary to put you in the position you would have had if the discrimination had not occurred (e.g. reinstating you, hiring you, awarding you back pay).
 - The IHRC may also award you *actual damages* to compensate you for the effects of the illegal discrimination, and direct the party that engaged in illegal discrimination to pay your *attorney's fees and costs* of the case.

Process Before the Courts

- If the IHRC issues a final order that is unfavorable to you, you can file a lawsuit in state court appealing that final order within **35 days** after it is issued.
- You *may* file a lawsuit in federal court if you are also alleging that the discrimination *violated 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. You can only file a federal law-based employment discrimination lawsuit *after* receiving a **“right to sue”** letter from the EEOC. A lawsuit based on your federal discrimination claim must be filed in federal or state court within **90 days** of the date you receive the “right to sue” letter. Note: the IDHR automatically cross-files eligible employment charges with the EEOC, and conducts the investigation for the EEOC under the terms of the agencies’ Work-Sharing Agreement.

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