

“KNOW YOUR RIGHTS”



Training on the Legal Rights and Responsibilities of
People with Alcohol and Drug Problems

**Maryland Laws Regarding Discrimination
(July 2006)**

I. The Basics

Q1. Does Maryland (“MD”) have State laws, like the Federal laws in the *Know Your Rights* brochure, that protect 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 – but with potential limitations and fewer remedies than are provided by Federal law. Maryland has a civil rights law that prohibits discrimination against individuals on the basis of disability in employment, housing and public accommodations. The state’s anti-discrimination law is found in Article 49B of the Maryland Code, and the regulations implementing this law are contained in Title 14, Subtitle 03 of the Code of Maryland Regulations (“COMAR”). This summary refers to Maryland’s anti-discrimination law generally as **Article 49B**.

Article 49B gives the **Maryland Commission on Relations (“MCHR”)** the power to enforce the state’s anti-discrimination law, and gives individuals complaining of illegal discrimination prohibited by the state law the right to file complaints with the MCHR. However, Article 49B does not give individuals a right to sue, in court, to seek remedies for violations of the state’s law.

- The **Maryland Human Relations Commission (MCHR)** is the State administrative agency responsible for enforcing Article 49B, Maryland’s anti-discrimination law.
- The MCHR accepts, investigates and can resolve complaints alleging discrimination in violation of Article 49B.
 - If Federal laws also cover an individual’s discrimination claims, the MCHR can accept these for dual processing with the appropriate Federal agency.
 - See the MCHR’s informational brochures in the handouts, and MCHR’s website at www.mchr.state.md.us.

Q2. Are people with histories of alcohol or drug problems protected from discrimination by Maryland’s anti-discrimination law (Article 49B)? Are alcoholism and drug addiction considered “disabilities” under this law?

- A2.** Maybe – in the context of employment discrimination; and yes, in the context of housing and public accommodations discrimination – except that current illegal drug use or addiction is not considered a “disability” under Maryland’s law.

Because of how Article 49B defines “disability” (see Q3 below), it is not clear if Maryland’s protections against employment discrimination extend to people with histories of alcohol or drug problems. But the MCHR considers alcoholism and past drug addiction to be disabilities for purposes of enforcing all of the provisions of the state’s anti-discrimination law, including those prohibiting discrimination in the areas of employment and public accommodations as well as housing. Current illegal drug use and/or addiction, however, are excluded from the law’s definition of “disability” and illegal drug users are not protected from discrimination under Maryland’s law.

- Q3.** How does Article 49B define “disability”?

- A3. (1) The statute (Article 49B) has two definitions:**

The **employment discrimination** provisions of Article 49B (the Fair Employment Practices Act) define disability as “any physical disability, infirmity, malformation or disfigurement which is caused by bodily injury, or illness...; and any mental impairment or deficiency as, but not limited to, retardation or such other which may have necessitated remedial or special education and related services.” (Article 49B, § 15.) Although a 1978 opinion of the Maryland Attorney General interpreted this provision to exclude alcoholism and drug addiction from the law’s definition of “disability,” the regulatory definition of “disability” is broader (below) and MCHR’s policy is that alcoholism and past drug addiction are covered.

The law’s **public accommodations** provisions do not contain a separate definition of “disability.”

The law’s **housing** provisions (the Maryland Fair Housing Act) define “disability” in essentially the same way as the Federal laws explained in the *Know Your Rights* brochure, including the ADA, Rehabilitation Act and Fair Housing Act. Section 20 of Article 49B states that “disability” means: “(i) a disability that substantially limits 1 or more of an individual’s major life activities; (ii) a record of having a disability that substantially limits 1 or more of an individual’s major life activities; or (iii) being regarded as having a disability that substantially limits 1 or more major life activities.” However, the law specifically excludes current illegal drug use or addiction.

- (2) The regulations implementing Article 49B (COMAR) define “disability” as follows:**

General definition. In addition to enumerating specific physical and mental impairments, COMAR also states that a “disability” means:

- a physical or mental impairment (other than those enumerated in the first part of the regulation) which substantially limits one or more of an individual’s major life activities;
- a record of having such an impairment; or
- being regarded as having such an impairment.

COMAR thus adopts the definition of “disability” used by the Federal non-discrimination laws explained in the ***Know Your Rights*** brochure.

Article 49B and COMAR also define other key terms as they are defined by these Federal laws, including:

- The term “major life activities,” as used in the employment, public accommodations and housing contexts, includes but is not limited to, “functions such as caring for one’s self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, working, driving a vehicle, socializing, and engaging in procreation and recreation.”
- The employment provisions of Article 49B protect a “qualified individual with a disability.” This means an individual who “with or without reasonable accommodation can perform the essential functions of the job in question; or is otherwise qualified for the benefit, term, condition, or privilege of employment at issue.”

II. Article 49B’s Protections Against Discrimination

Q4. In what areas of life does Article 49B protect individuals from discrimination because of their disability?

A4. Article 49B’s protections extend to:

- Employment
- Housing (residential and commercial property)
- Public Accommodations

Employment Maryland “Fair Employment Practices Act” (MD. CODE Art. 49B § 14, § 15, § 16)

Employment – General

Q5. Who does Article 49B protect from disability-based employment discrimination?

A5. Article 49B’s employment provisions (the Fair Employment Practices Act, or FEPA) make it illegal for any 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 which is “unrelated in nature and extent so as to reasonably preclude the performance of the employment.”

Q6. What employers are covered by Article 49B?

A6. Section 15 of Article 49B defines “employer” as any person engaged in an industry or business with fifteen (15) or more employees, including the State of Maryland.

Q7. Are all employees in Maryland protected by Article 49B?

A7. Most employees are covered by Article 49B. The term “employee” does not include any person elected to public office, or any person chosen by such public office-holders to serve on their personnel staff, or an appointee at the policy making level of such offices.

Q8. When are employees protected by Article 49B?

A8. To be protected by Article 49B, people with disabilities must have the requisite job qualifications as well as be able to perform the “essential functions” of the job, with or without a reasonable accommodation.

Q9. Are the employment discrimination provisions like those of the Federal laws explained in *Know Your Rights*?

A9. Yes, in most respects, the FEPA adopts the same standards and follows the same basic rules that the Rehabilitation Act and the ADA establish.

The FEPA’s nondiscrimination requirements are very similar to the Federal laws’ requirements in the following areas:

- 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

Q10. 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 (assuming alcoholism and drug addiction are found to be covered disabilities in individual cases) ?

A10. Like the Federal laws, Article 49B requires employers to make reasonable accommodations to the known physical and mental limitations of a “qualified

individual with a disability.” Accommodations are not required if they are not “reasonable,” i.e., would pose an undue hardship on the employer’s operations. Examples of reasonable accommodations are: job restructuring; modified work schedules; and permitting an employee to use paid or unpaid sick leave, disability leave or medical leave. Note: No accommodations are required for job applicants or employees with current illegal drug use or addiction problems, since neither the Maryland nor Federal anti-discrimination laws protect these individuals.

Q11. Are employers allowed to ask about a person’s criminal record when that person applies for a job?

A11. Yes. Maryland law allows many employers to ask about criminal history information. See the related hand-out.

Employment-related Medical Inquiries, Examinations and Medical Leave

A. Medical Examinations and Drug or Alcohol Testing by Employers: Generally

Q12. Are Article 49B’s employment provisions regarding medical examinations and drug and alcohol tests similar to those of the Federal laws explained in the “*Know Your Rights*” brochure?

A12. Yes (regarding medical inquires and exams) and no (regarding drug and alcohol testing by employers).

(1) Employer Drug/Alcohol Testing

Drug or alcohol testing by employers is not governed by Article 49B. A separate Maryland law allows, and regulates, drug and alcohol testing by employers. This is in the General Health section of the Maryland Code (MD CODE § 17-214).

- Section 17-214 permits employers to conduct job-related alcohol and “controlled dangerous substance testing” of any person, including job applicants, employees and contractors.
- Physicians and laboratories conducting these tests may not reveal to the employer use of a nonprescription drug, excluding alcohol, or use of a medically prescribed drug, unless the person being tested is unable to verify that the drug was medically prescribed.

(2) Medical Inquiries by Employers: Pre-Hire

Under the employment provisions of Maryland’s anti-discrimination law (Article 49B), like the Federal laws:

- Employers may not conduct preemployment inquiries or ask applicants to submit to preemployment medical examinations to ascertain the existence of or severity of a disability.

- However, employers may ask applicants about their ability to perform specific functions of the job.
- Employers may condition offers of employment on the results of a medical exam if:
 - All entering employees in the job position are subjected to the exam regardless of disability; and
 - The results are used only to inform supervisors regarding necessary work restrictions and accommodations required by an employee with a disability, or to inform supervisors or first aid or safety personnel as needed to deal with medical emergencies; or to provide information to the MCHR when investigating a complaint of disability-based discrimination.

(3) Medical Inquiries by Employers: Post-Hire

Article 49B does not expressly prohibit or regulate post-hire medical inquiries or examinations. However, Federal law prohibits most employers from inquiring whether an employee has a disability or inquiring as to the nature and severity of the disability, unless the inquiry is shown to be job-related and consistent with business necessity.

(4) Medical Leave

Denying a qualified individual leave from work, for example to obtain treatment for an alcohol or drug problem, may violate the Article 49B’s employment provisions as well as applicable Federal non-discrimination laws.

Housing
Maryland “Fair Housing Act” (the “FHA”)
(MD. CODE Art. 49B, §22, § 37)

Q13. Does Maryland protect people in treatment or otherwise in recovery from alcohol or drug problems from housing discrimination?

A13. Yes. Maryland’s Fair Housing Act, which is included in Article 49B, was modeled after the federal law under Title VIII of the Civil Rights Act of 1968. Its protections are very similar to those of the federal Fair Housing Act described in the *Know Your Rights* brochure. Maryland’s FHA:

- 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, but this may also be done at the expense of the person with the disability needing accommodation.
- Permits potential landlords to make certain inquiries of persons applying for housing, including whether:
 - An applicant is a current illegal drug user.
 - An applicant has been convicted of the illegal manufacture or distribution of controlled substances.
- Generally prohibits landlords from making inquiries about the existence, nature or severity of a housing applicant's disability.

**Public Accommodations
Maryland Public Accommodations Act
(the "MPAA") (MD Code Art. 49B §5, §8, §8a)**

A14. Does Maryland's anti-discrimination law also protect people with histories of alcohol or drug problems from discrimination in public accommodations?

A14. Yes. Maryland's Public Accommodations Act, which is contained in Article 49B, also prohibits disability-based discrimination by places of public accommodation (such as lodgings, hospitals, theaters, restaurants and retail stores). Violation of the MPAA is a crime punishable by a fine. Key provisions of Article 49B include:

- **§ 5b** – prohibits the owner, operator, agent or employee of any "public accommodation" from refusing, withholding from, or denying a person, any accommodations, advantages, facilities and privileges because of that person's disability (or on the basis of other prohibited criteria). Punishable by fine.
- **§ 8** – prohibits any person, business, corporation, partnership, copartnership or association or any other individual or group license regulated by the Maryland Department of Labor, from refusing, withholding from, denying or discrimination against any person the accommodations, advantages, facilities, privileges, sales or services because of disability (among others). Punishable by fine.
- **§8a** – also prohibits discrimination in the leasing of commercial property against any person on the basis of a handicap (among others).

III. Enforcing Your Rights in Maryland: Remedies and Resources for Addressing Illegal Discrimination

Q15. What can I do if I think I have been discriminated against because of my past or current alcohol or drug problem?

A15. In addition to the remedies under the federal anti-discrimination laws listed at the end of the *Know Your Rights* brochure, if you live in Maryland, or if the alleged discrimination occurred in Maryland, you have a few options.

Discrimination Claims Charging Violations of Maryland’s Law (Article 49B):

- You can file a complaint charging violations of Maryland’s anti-discrimination law (Article 49B) with the Maryland Commission on Human Relations (MCHR.) The complaint must be filed with MCHR within 6 months of the alleged discrimination in cases involving claims of discrimination by an employer or by a place of public accommodation. In cases involving unlawful housing practices, individuals must file their complaints within 1 year of the alleged housing discrimination.
 - Information on this process is available on MCHR’s website, www.mchr.state.md.us, or by telephone at (410) 767-8600.
 - See the hand-outs from the MCHR website.
- You can file a lawsuit in Federal court if you are also alleging that the discrimination violated Federal law. (Article 49B does not give individuals the right to sue for violations of Maryland’s anti-discrimination law, so you cannot file a complaint in state or federal court but must instead go to the MCHR if you are seeking to prevent or remedy violations of the state law.)
- Some Maryland counties have their own anti-discrimination codes, and these may give individuals the right to file a lawsuit in court. Depending on where the alleged discriminatory act took place, you may be able to file a lawsuit against the person committing the discriminatory act in the county’s circuit court for violations of that county’s code. (Check your local county code to see if it prohibits discrimination, and what remedies it provides.)

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 Baltimore Field Office of the U.S. EEOC is located at the City Crescent Building, 10 S. Howard Street, 3rd Fl, Baltimore, MD 21201, tel. (410) 962-3932, and is open Monday – Friday from 8:30am to 5:00p.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.