

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

Minnesota Laws Regarding Discrimination
(July 2006)

I. The Basics

Q1. Does Minnesota have a State law, 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. Minnesota has a law that prohibits discrimination on the basis of disability called the **Minnesota Human Rights Act (“MHRA”)**, MINN. STAT. § 363A.

The MHRA’s coverage of individuals with disabilities is generally very similar to Federal disability discrimination laws.

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

A2. Generally yes. Individuals with alcohol and drug histories are often protected by the MHRA. The MHRA does makes reference to “qualified disabled persons” in situations of employment discrimination and obtaining public services. Among the criteria to be “qualified,” the person’s disabling condition cannot “result[] from alcohol or drug abuse which prevents a person from performing the essential functions of the job in question or constitutes a direct threat to property or the safety of others.” MINN. STAT. § 363A.03 subd. 36; see also MINN. R. 5000.3400 subp. 13, 21 (2005) (regulations applying the same definition). However, this definition has not been interpreted as limiting the MHRA’s protections for past drug use. Campbell v. Minn. Pub. Hous. Auth., 168 F.3d 1069, 1072 n.1 (8th Cir. 1999). Alcoholism disabilities are also protected by the MHRA. Larson v. Koch Refining Co., 920 F. Supp. 1000, 1004 (D.Minn. 1996) (citing Khalifa v. Gruys, Johnson & Assoc., 407 N.W.2d 733, 735 (Minn. Ct. App. 1987)). Thus, as with the ADA and Rehabilitation Act, it is largely only when current conduct is affected by alcohol or drug problems that discrimination protections do not apply.

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

A3. Yes, for the most part. The Minnesota definition of “disability” is similar to, but slightly broader than, that used in the ADA and the Rehabilitation Act. Thus claims arising the MHRA are analyzed under ADA/Rehabilitation Act standards. Phillip v. Ford Motor Co., 328 F.3d 1020 (Minn. 2003) (analyzing ADA

definition); Fahey v. Avnet, Inc., 525 N.W.2d 568 (Minn. Ct. App. 1994) (analogizing to Rehabilitation Act definition)

- General definition. Under the MHRA (§ 363A.03(12)), a “disability” means any condition or characteristic that causes a person to:
 - (1) have a physical, sensory, or mental impairment which *materially* limits one or more major life activities;
 - (2) have a record of such an impairment; or
 - (3) be regarded as having such an impairment.
- The MHRA “materially limits” standard is less stringent than the ADA’s “substantially limits” standard, though otherwise claims under the two acts are evaluated in the same way. Kammueller v. Loomis, Fargo & Co., 383 F.3d 779, 784 (8th Cir. 2004)).
- Applying the MHRA’s definition in practice: As is the case with the Federal laws explained in the *Know Your Rights* brochure –
 - Whether a particular person has a “disability” within the meaning and coverage of the MHRA is decided on an individualized, case-by-case basis. Hoover v. Norwest Private Mortg. Banking, 632 N.W.2d 534 (Minn. 2001).

II. The MHRA’s Protections Against Discrimination

Q4. In what areas of life does the MHRA protect individuals from discrimination because of their disability?

A4. The MHRA’s protections extend to:

- Employment, including medical examinations and drug/alcohol tests
- Housing
- Education
- Public accommodations and other categories, listed below.

Employment

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

A5. The MHRA makes it illegal for any employer covered by the law to discriminate on the basis of an individual’s past, current or perceived disability.

Q6. Which employers are covered by the MHRA?

A6. The MHRA applies to all employers, public and private with **one or more** employees, labor organizations, and employment agencies in Minnesota. MINN. STAT. § 363A.03 subd. 16. The MHRA prohibits these groups from discriminating on the basis of disability unless based upon a “bona fide occupational qualification” (a term that neither statutes nor regulations define, but which is interpreted in the same way as federal law, that the discrimination must, at a minimum, be reasonably necessary to the operations of the particular employer). Huisenga v. Opus Corp., 494 N.W.2d 469 (Minn. 1992).

Q7. Are all employees covered by the MHRA?

A7. A great many, but not all, are. The MHRA’s employment discrimination provisions do not apply to individuals employed by a parent, grandparent, spouse, child, or grandchild, nor those employed in the domestic service of any person. MINN. STAT. § 363A.20 subd. 1.

Q8. When are employees with drug and/or alcohol-related conditions protected by the MHRA?

A8. To be protected by the MHRA, people with drug and alcohol-related conditions 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. Additionally, the condition cannot constitute a direct threat to property or the safety of others. MINN. STAT. § 363A.03 subd. 36.

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

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

The MHRA’s nondiscrimination requirements are very similar to the Federal laws’ requirements in the following respects:

- Defining what constitutes unlawful discriminatory employment, namely refusing to hire, discharging, or discriminating with respect to benefits or conditions of employment on the basis of a disability.
- Instituting requirements for reasonable accommodations (which, as with the ADA, apply only to employers with 15 or more employees). MINN. STAT. § 363A.08 subd. 6.

Q10. If I have a **criminal conviction** that made me eligible to serve a jail sentence, does Minnesota law provide me with any protections when I seek employment?

A10. In general, if you are seeking public employment or desire to work in an occupation which is licensed by the state, then you cannot be disqualified solely or in part because of your conviction(s) unless the crime or crimes directly relate to the position or license you are applying for and there is insufficient evidence of your rehabilitation. MINN. STAT. § 364.03. Furthermore, if you are denied employment or a license on this basis, you are entitled to notice of that fact. MINN. STAT. § 364.05.

Employment and Medical Examinations and Drug/Alcohol Tests

Q11. Are the MHRA's provisions regarding medical examinations and drug and alcohol tests similar to those of the Federal laws explained in the ***Know Your Rights*** brochure?

A11. No. The MHRA is *different* from the ADA and the Rehabilitation Act regarding **medical examinations** and **drug and alcohol tests**.

- The MHRA allows **pre-employment** inquiries into disabilities and medical examinations *only* when an employer shows they are based on a "bona fide occupational qualification." MINN. STAT. § 363A.08 subd. 4(a).
- As with Federal law, the MHRA prohibits most employers from requiring or requesting that an employee undergo a **post offer** physical exam unless:
 - the purpose of the exam is to determine the person's capability to perform available employment
 - the examination tests only for essential job-related activities
 - all entering employees are subjected to such an examination regardless of disability;
 - information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except that--
 - supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;
 - first aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment; and
 - government officials investigating compliance with the MHRA shall be provided relevant information on request; provided that
 - the results of such examination are used only in accordance with the MHRA. MINN. STAT. § 363A.20 subd. 8.

Q12. Are there any other provisions of Minnesota law, besides the MHRA, which protect employees and job seekers with regard to medical examinations and drug and alcohol tests?

A12. Yes. Workplace drug and alcohol testing is significantly regulated by the **Minnesota Drug and Alcohol Testing in the Workplace Act**. MINN. STAT. §§ 181.950-.957. The following requirements are in place for such testing:

- The testing must be conducted pursuant to a written drug and alcohol testing policy. MINN. STAT. §§ 181.951 subd. 1(b), 181.952.
- The tests must be conducted by an approved laboratory. MINN. STAT. §§ 181.951 subd. 1(b), 181.953 subd. 1.
- The testing may not be carried out on an arbitrary and capricious basis. MINN. STAT. § 181.951 subd. 1(c).
- Test results must be released to the employee or job applicant, and, upon request, the test result report must be released as well. § 181.953 subds. 8, 9.
- If a job offer is made contingent on passing a drug or alcohol test, then before the offer can be withdrawn, there must be: (1) a positive test result; (2) verification by a confirmatory test; and (3) an informing of the job applicant of the reason for withdrawing the offer. MINN. STAT. §§ 181.953 subd. 11, 181.951 subd. 2.
- If a drug or alcohol test is given as part of a routine annual physical examination required or requested by the employer, employees must be given at least two or three weeks written notice of the test. MINN. STAT. § 181.951 subd. 3.
- Random drug and alcohol testing is only allowed for employees in “safety-sensitive positions,” where the drug or alcohol impairment would threaten the health or safety of any person. MINN. STAT. § 181.951 subd. 4.
- Nevertheless, where an employer has a reasonable suspicion that an employee is under the influence of drugs or alcohol, has violated the employer’s written drug and alcohol policy, or has been involved in an injury or accident, a drug or alcohol test can be required. MINN. STAT. § 181.951 subd. 5.
- Lastly, if an employee is enrolled, or was in the last two years enrolled, in a chemical dependency treatment program either at the referral of the

employer or as part of an employee benefit plan then drug or alcohol tests may be required. MINN. STAT. § 181.951 subd. 6.

Additionally, employers are not allowed to require any employee or job applicant to pay for employer-required medical examinations, the furnishing of medical records, or drug or alcohol testing (except certain confirmatory tests). MINN. STAT. §§ 181.61, 181.953 subds. 4, 9.

The consequences of positive test results are limited as follows:

- If there is a positive test result on an initial screening test for drug or alcohol, an employee may be suspended or transferred if the employer believes that this is reasonably necessary to protect the health or safety of the employee or others, but otherwise the employee may not be fired, disciplined, or discriminated against. MINN. STAT. § 181.953 subd. 10.
- If there is a positive test result on an confirmatory test for drug or alcohol, but this is the first such result, then the employee must be given the opportunity to participate in an employee-paid counseling or rehabilitation program. Only if the employee refuses this offer or refuses to complete the treatment can he/she be fired. MINN. STAT. § 181.953 subd. 10(b).

Housing

Q13. What protections against discrimination are provided by the MHRA in the context of housing?

A13. The MHRA prohibits discrimination on the basis of disability regarding all real property transactions, both residential and commercial, involving property owners, real estate brokers, or any financial institution offering a loan or mortgage for housing. MINN. STAT. § 363A.09. Thus, refusing to sell or rent or otherwise treating people differently in the terms or conditions of the sale or rental of property because of their disability is not allowed.

- However, if a prospective tenant poses a direct threat to the health or safety of others or would damage property, then he/she is not protected by the MHRA's housing provisions. MINN. STAT. § 363A.10 subd. 4. Thus, someone who is a current illegal drug user is unlikely to be covered by the MHRA.
- Also, the MHRA's disability provisions do not apply to one-family residences. MINN. STAT. § 363A.21 subd. 1(b).

Q14. Does the MHRA apply to public housing?

A14. Generally yes, however courts have ruled that certain Federal laws supersede the MHRA so that public housing authorities can inquire into an applicant's past drug use and past drug-dependency treatment. Campbell v. Minn. Pub. Hous. Auth., 168 F.3d 1069 (8th Cir. 1999) (ruling on the Housing Opportunity Program Extension Act of 1996 and noting that the analysis under the then recently-passed Quality Housing and Work Responsibility Act of 1998 would be the same). The purpose of these allowed inquiries, however, is only to determine whether the applicant is a current drug or alcohol abuser. Id. at 1076.

Education

Q15. What protections against discrimination are provided by the MHRA in the context of education?

A15. The MHRA prohibits discrimination on the basis of disability by any educational institution, public or private, including elementary, secondary, college, vocational, extension and professional schools. MINN. STAT. §§ 363A.13, 363A.03 subd. 14.

Other Protections

Q16. What other protections against discrimination are provided by the MHRA?

A16. Like federal non-discrimination laws, the MHRA prohibits discrimination on the basis of disability in public accommodations, in government facilities, in the extension of personal or commercial credit, and in entering business contracts (unless there is a legitimate business purpose for the alleged discrimination).

III. City-Specific Discrimination Laws

Additional Protections in Minneapolis

Q17. Are there other laws that protect people from discrimination in the city of Minneapolis?

A17. Yes, in addition to the MHRA, which applies throughout Minnesota – including Minneapolis – Minneapolis has its own anti-discrimination ordinance. The Minneapolis ordinance defines disability in the same way as does the state law. MINNEAPOLIS, MINN., CODE OF ORDINANCES, ch. 139.20 (2006).

Additional Protections in St. Paul

Q18. Are there other laws that protect people from discrimination in the city of Saint Paul?

A18. Yes, in addition to the MHRA, Saint Paul has its own anti-discrimination ordinance. The St. Paul ordinance defines disability in the same way as state law, though the burden for proving that a person is not a “qualified disabled person” is somewhat shifted to the employer or other entity charged with discrimination. ST. PAUL, MINN., CODE OF ORDINANCES, leg. ch. 183.02(4), 183.02(21) (2006). This St. Paul human rights ordinance covers employment, education, real property transactions including housing, public accommodations and public services. ST. PAUL, MINN., CODE OF ORDINANCES, leg. ch. 183 (2006).

IV. Enforcing Your Rights in Minnesota: Remedies and Resources for Addressing Illegal Discrimination

Q19. What can I do if I think I have been discriminated against because of my past or current alcohol or drug problem?

A19. 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 Minnesota, or if the alleged discrimination occurred in Minnesota, you have a few options.

- You can file a complaint with the **Minnesota Department of Human Rights (MDHR)**. Information on this process is available on MDHR’s website, <http://www.humanrights.state.mn.us>, or by telephone at (651) 296-5663 (in the Twin Cities area) or toll-free at 1-800-657-3704. The complaint must be filed within *one year* of the alleged discrimination. MINN. STAT. § 363A.28 subd. 3. Though MDHR does accept walk-in visits from 8:00am to 4:30pm, usually simply calling the office is sufficient to file your complaint.
- You can file a complaint with your local human rights commission. Again, the complaint must be filed within *one year* of the alleged discrimination. MINN. STAT. §§ 363A.07 subd. 3, 363A.28 subd. 3. Local human rights commissions are usually organized by city. In Minneapolis the local commission is called the Commission on Civil Rights and works along side the Minneapolis Department of Civil Rights. The Minneapolis Department on Civil Rights can be reached at (612) 673-3012. Their website is <http://www.ci.minneapolis.mn.us/civil-rights/>. In St. Paul, there is a Department of Civil Rights, which can be reached at (651)266-8964 or, if inquiring about filing a charge of discrimination, via email at hrightscomplaints@ci.stpaul.mn.us. The St. Paul Department’s website is <http://www.ci.stpaul.mn.us/depts/humanrights/>.
- **Note:** If you are claiming discrimination in a locality that has its own human rights commission, you have the option of filing an administrative complaint with the locality or the statewide Department of Human Rights, or you may bring a lawsuit in court. However, you may only file your

complaint in one of these three places, you cannot do more than one at any one time. In Minneapolis, for instance, you may:

- 1) File a complaint with the Minneapolis Commission on Civil Rights;
OR
 - 2) File a complaint with the Minnesota Department of Human Rights
OR
 - 3) File a lawsuit in court.
- Nevertheless, after filing a complaint with a local commission or the Minnesota Department of Human Rights, if 45 days pass and a hearing is not held or the commission or department declines to pursue the charge, you may begin civil litigation. MINN. STAT. § 363A.33 subd. 1.; MINN. STAT. § 363A.07 subd. 4.
- You can also file a lawsuit in State court (or in Federal court if you are also alleging that the discrimination violated Federal law). MINN. STAT. § 363A.33 subd. 1. The suit must be filed within *one year* of the alleged discrimination. MINN. STAT. § 363A.28 subd. 3. However, if the lawsuit follows an MDHR ruling, such as a determination that there is no probable cause for pursuing the complaint, the suit must be brought within *45 days* of receipt of the MDHR notice. MINN. STAT. § 363A.33 subd. 1.

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 (though in Minnesota the 180 day deadline can be extended to 300 days when the discrimination is also covered by a state or local anti-discrimination law, such as the MHRA). The Minneapolis Area Office of the EEOC is located at the Towle Building, 330 South Second Avenue, Suite 430, Minneapolis, MN 55401-2224, tel. (612) 335-4040, and is open Monday – Friday from 8:30a.m. to 4:50p.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.