

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

**North Carolina Laws Regarding Discrimination
(September 2007)**

I. The Basics

Q1. Does North Carolina 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 the problems?

A1. Yes. North Carolina has several major laws that prohibit discrimination against individuals on the basis of disability. We will refer to these laws in the summary as the **North Carolina anti-discrimination laws**.

The State’s main anti-discrimination laws are the **North Carolina State Fair Housing Act**, N.C. GEN. STAT. ANN. § 41A, the **North Carolina Equal Employment Practices Act**, N.C. GEN. STAT. ANN. § 143-49A, the **North Carolina State Personnel Act**, N.C. GEN. STAT. ANN. §§ 126-16, 126-36, and the **North Carolina Persons With Disabilities Protection Act**, N.C. GEN. STAT. ANN. § 168A.

The **North Carolina Human Relations Commission of the Department of Administration** (“NCHRC”) is the agency charged with enforcing North Carolina’s anti-discrimination laws pertaining to housing. NCHRC receives and investigates discrimination complaints and provides technical assistance to employers, business establishments and housing providers regarding compliance with the anti-discrimination laws.

- The NCHRC enforces **The North Carolina State Fair Housing Act** (“**SFHA**”), N.C. GEN. STAT. ANN. § 41A, which makes it unlawful for an employer to harass or discriminate against any individual on the basis of a disability, mental or physical;

For other anti-discrimination laws, there is no specific enforcement agency.

- **North Carolina Equal Employment Practices Act**, N.C. GEN. STAT. ANN. § 143-49A, makes it unlawful for a business establishment with **fifteen** or more employees to discriminate against any individual on the basis of a disability. This Act states that the NCHRC may hear complaints, but attorneys at the Commission state that they only advise individuals on housing-related issues and refer individuals seeking assistance with employment-related discrimination to the Equal Employment Opportunity Commission (“EEOC”) or to www.northcarolinacivilrightsattorneys.com.
- **North Carolina Persons With Disabilities Protection Act (“PWDPA”)**, N.C. GEN. STAT. ANN. § 168A, prohibits discrimination on the basis of a disability, physical or mental, in employment, public accommodations, public service, or public transportation.
- **North Carolina State Personnel Act (“SPA”)**, N.C. GEN. STAT. ANN. § 126-16 prohibits discrimination in hiring or compensation on the basis of a disability, physical or mental, by the state, its agents, or any entity doing business with the state. This includes demotions, layoffs, transfers, termination or the failures to promote and train or transfers on the basis of a disability.

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

A2. Yes, but only people with a **history** of alcohol or drug problems are considered individuals with a disability protected from discrimination under North Carolina laws. Persons with “active alcoholism or drug addiction or abuse” are **not** protected by the anti-discrimination laws. Persons with “active” drug abuse or addiction problems are also not protected under the housing anti-discrimination laws. See N.C. GEN. STAT. ANN. § 168A-3(7)(a)(iii)(B) and N.C. GEN. STAT. ANN. § 41A-3(3a).

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

A3. Yes and no. North Carolina’s anti-discrimination laws mirror Federal law in a number of respects however, unlike Federal law, the PWDPA specifically excludes current alcohol abuse.

- The PWDPA’s definition of disability includes both physical and mental disabilities. This Act relates to discrimination in employment, public accommodations, public services, and public transportation.
 - A person with a disability must have a “physical or mental impairment which substantially limits one or more major life activities.” N.C. GEN. STAT. ANN. § 168A-3(7a).

- “Physical or mental impairment” includes any “physiological disorder” or “any mental disorder,” but it excludes “active alcoholism or drug addiction or abuse.” N.C. GEN. STAT. ANN. § 168A-3(7a).
 - Working is considered a major life activity under PWDPA. N.C. GEN. STAT. ANN. § 168A-3(7a)(b).
 - Mental and physical disability excludes disorders resulting from current alcoholism, drug addiction, or drug abuse. N.C. GEN. STAT. ANN. § 168A(7a)(a)(iii)(B).
- The SFHA’s definition of “handicapped condition” includes both physical and mental impairments.
 - A person with a disability must have a “physical or mental impairment which substantially limits one or more of a person’s major life activities.” N.C. GEN. STAT. ANN. § 41A-3(3a)(i).
 - “[C]urrent, illegal use of or addiction to a controlled substance as defined in 21 U.S.C. § 802, the Controlled Substances Act” does not constitute a handicapping condition. Current alcohol abuse and addiction would thus be covered under the housing anti-discrimination law. N.C. GEN. STAT. ANN. § 41A-3(3a).

II. North Carolina Anti-Discrimination Laws

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

A4. North Carolina’s anti-discrimination acts extend to:

- Employment (PWDPA; North Carolina Equal Employment Practices Act; North Carolina State Personnel Act)
- Housing (SFHA)
- Public Accommodations (PWDPA)
- Public Services (PWDPA)
- Public Transportation (PWDPA)

Employment

North Carolina Persons With Disabilities Protection Act (“PWDPA”) N.C. GEN. STAT. ANN. § 168A

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

A5. PWDPA’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 physical or mental disability, except where:

- The employment decision is on the basis of law or regulations imposing physical, health, mental or psychological job requirements;
 - Discrimination on the basis of an individual’s history of drug abuse or current use of drugs occurs in an establishment that handles controlled substances;
 - The individual discriminated against has a communicable disease that would disqualify a person lacking a disability from similar employment;
 - The individual has not fulfilled their legal duties in requesting reasonable accommodations and the employer has failed to make reasonable accommodations;
 - The employer inquires as to whether the individual has the ability to perform the job duties;
 - The employer makes the individual undergo a medical examination to determine his ability to work if an employment offer has been made contingent on this examination and all individuals conditionally offered employment have to undergo this examination;
 - The employer obtains medical information to establish an employee health record;
 - The employer requires pre-employment tests that test job-related abilities, are required of all applicants for the same position, and accurately measure aptitude or achievement and are not determined by the disability.
- N.C. GEN. STAT. ANN. § 168A-5(b).

Q6. What employers are covered by PWDPA?

A6. PWDPA defines “employer” as anyone employing **fifteen** or more persons within the state. It excludes employers whose employees are hired to work at the person’s home or farm as domestic or farm workers. N.C. GEN. STAT. ANN. § 168A-3(2).

Q7. Are all employees covered by PWDPA?

A7. Generally all employees are covered by PWDPA, except individuals employed as domestic or farm workers in a person’s home or farm. N.C. GEN. STAT. ANN. § 168A-3(2).

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

A8. Yes, in most respects, PWDPA 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, PWDPA requires employers to make reasonable accommodations for employees with a disability. “Reasonable accommodations” include making physical changes to the workplace, which could include improving accessibility, modifying equipment, providing mechanical aids, or making reasonable changes in the duties of the job. N.C. GEN. STAT. ANN. § 168A-4 and 168A-3(10)(a).
- Q10.** May employers make inquiries about an applicant’s criminal history?
- A10.** Yes, employers may make inquiries about an applicant’s criminal history, both about arrests leading to convictions and those that did not lead to convictions.

Employment-related Medical Inquiries and Examinations

- Q11.** Are PWDPA’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.** Yes, PWDPA’s employment provisions regarding medical inquiries, examinations and drug and alcohol tests are substantially similar to the Federal laws.

Pre-Employment -- Examination and Inquiries

Generally, employers are prohibited from requiring any medical or psychological examination of an applicant, or from making any medical or psychological inquiry of an applicant or inquiry as to whether the applicant has a disability. N.C. GEN. STAT. ANN. § 168A-5(b).

Employers may inquire into the ability of an applicant to perform job-related functions and may respond to an applicant’s request for reasonable accommodation N.C. GEN. STAT. ANN. §§ 168A-4(b), 168A-5(b)(5).

Unlike Federal law, however, employers may also administer pre-employment tests if they relate to job activities, are required of all applicants unless they are to determine the extent that the disabling condition would interfere with work, and they accurately measure the applicant’s aptitude or achievement rather than reflecting the disability. N.C. GEN. STAT. ANN. § 168A-5(b)(8).

Post-Conditional Job Offer -- Examination and Inquiries

Employers are permitted to require a medical examination to determine the person’s ability to perform the job duties if a conditional job offer has been given

and the examination is either required of all persons conditionally offered employment for the same position or is limited to determining the extent to which a person's disabling condition would interfere with his or her ability to perform the job duties. N.C. GEN. STAT. ANN. § 168A-5(b)(6).

Housing
North Carolina State Fair Housing Act ("SFHA"), N.C. GEN. STAT. ANN. § 41A

- Q12.** Does North Carolina protect people in treatment or otherwise in recovery from alcohol or drug problems from housing discrimination?
- A12.** Yes. North Carolina's housing protections are similar to those of the federal Fair Housing Act described in the *Know Your Rights* brochure.

SFHA provides that:

- Individuals with a disability are entitled to full and equal access to all housing accommodations offered for rent, lease or compensation in North Carolina.
 - Current illegal drug users or addicts are not considered disabled under this act. N.C. GEN. STAT. ANN. § 41A-3(3).
 - "Housing accommodations" includes any "improved or unimproved real property . . . which is used or occupied, or is intended, arranged, or designed to be used or occupied, as the home or residence of one or more individuals." N.C. GEN. STAT. ANN. § 41A-3(4).
- Any person selling, exchanging, renting, or leasing real property may not refuse to permit an individual with a disability, at that person's expense, to make reasonable modifications of the existing rented premises if the modifications are necessary for full enjoyment of the premises. N.C. GEN. STAT. ANN. § 41A-4(2a).
- Any person selling, exchanging, renting, or leasing real property for compensation must make reasonable accommodations in rules, policies, practices, or services, when those accommodations may be necessary to afford individuals with a disability an equal opportunity to use and enjoy the premises. N.C. GEN. STAT. ANN. § 41A-4(2b).

Public Accommodations, Public Services, and Public Transportation
N.C. GEN. STAT. ANN. §§ 168A-6, 168A-7, 168A-8

- Q13.** Does North Carolina's anti-discrimination law also protect people with histories of alcohol or drug problems from discrimination in public accommodations, public services, and public transportation?

- A13.** Yes. PWDPA prohibits disability-based discrimination in places of public accommodation (such as facilities, stores, other establishment, hotel, or motel, which supplies goods or services on the premises to the public or which solicits or accepts the patronage or trade of any person), in public services (such as education, health, social services, recreation, and rehabilitation), and transportation to the general public. Anyone who violates these provisions of PWDPA is liable for declaratory and injunctive relief. N.C. GEN. STAT. ANN. §§ 168A-6, 168A-7, 168A-8 and 168A-11.

III. Analyzing Discrimination Claims under North Carolina Law

While North Carolina’s PWDPA anti-discrimination laws do not protect those with “active” alcoholism, drug addiction, or drug abuse, one court has determined that it does protect alcoholism that is not “active.” *McCullough v. Branch Banking & Trust Co.*, 136 N.C.App. 340, 347-48 (Ct. App. 2000). This court also defined “active alcoholic” to be “an alcoholic who is currently engaged in the use of alcohol or was in the immediate past engaged in the use of alcohol.” *Id.* at 348. This court accepted the trial court’s instruction to the jury that an “‘active alcoholic’ employee is an alcoholic who was ‘using alcohol in a periodic fashion during the weeks and months prior to his termination.’” *Id.*

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:

- For problems under the PWDPA, file a civil action in the county where the alleged discriminatory practice occurred or where the plaintiff or defendant lives. For employment-related discrimination, a person must file a civil action within 180 days. For all other forms of discrimination covered by PWDPA, a person has up to two years to file a civil action. N.C. GEN. STAT. ANN. § 168A-11(a) and (c).
- Also, while the North Carolina Human Relations Commission (“NCHRC”) may investigate charges of employment discrimination under the Equal Employment Practices Act, they suggest persons claiming disability discrimination contact the EEOC or www.northcarolinacivilrightsattorneys.com (** See NOTE below**)

- For violations of the State Personnel Act (“SPA”) section 126-16, where a person claims that he was not given equal opportunity without regard to his disability, the individual may file a complaint directly to the State Personnel Commission. Where a person claims that he was not promoted, transferred, or trained due to discrimination based on his disability, the individual may also file an appeal directly with the State Personnel Commission. N.C. GEN. STAT. ANN. § 126-36.1 and 126-36(a).
- In cases of housing discrimination, an aggrieved individual may file a complaint with NCHRC. The complaint must be filed within one year after the alleged discriminatory action occurred. NCHRC will investigate the complaint and work towards conciliation. If the NCHRC finds no reasonable grounds to believe unlawful discrimination occurred, it may issue a right-to-sue letter which will enable the complainant to file a civil action in appropriate court. N.C. GEN. STAT. ANN. § 41A-7(b) and (c).

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 Charlotte, Greensboro, and Raleigh. The Charlotte District Office is located at 129 West Trade Street, Suite 400, Charlotte, NC 28202, phone (800)669-4000, and is open Monday – Thursday from 8:30 a.m. through 5:00 p.m. and Friday from 8:30 a.m. through noon. 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.

NOTE: Except in the area of housing, North Carolina’s anti-discrimination laws provide fewer protections than federal law. As a result, the state’s anti-discrimination commission refers employment-based discrimination claims directly to the EEOC.