

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

New York Laws Regarding Discrimination
(February 2005)

The Basics

Q1. Does New York have a State law, like the Federal laws discussed 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. New York has a law that prohibits discrimination on the basis of a disability called the **New York State Human Rights Law** (“HRL”), N.Y. Exec. L. § 290, *et seq.*

The HRL’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 and the ADA – apply in cases involving discrimination based on alcohol or drug problems, can be a useful guide to understanding how the HRL has been interpreted, or is likely to be in future cases.

- **The New York State Division of Human Rights** (“Division”) is the State administrative agency responsible for enforcing the HRL.
 - The Division accepts, investigates and can resolve complaints alleging discrimination in violation of the HRL.
 - If Federal laws also cover an individual’s discrimination claims, the Division can accept these for dual processing with the appropriate Federal agency.
 - See the Division’s informational brochures in the hand-outs, and the Division’s website www.nysdhr.com.

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

A2. Yes. The Division has ruled that:

- **alcoholism** is a “disability” covered by the HRL. Alcohol abuse may also meet the HRL’s definition.

and

- **drug addiction** is also a “disability” under the law. Drug abuse may also meet the HRL’s definition.

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

A3. No. The New York definition is somewhat broader than that used in the ADA and the Rehabilitation Act.

- General definition. Under the HRL, a “handicap or disability” means:
 - (a) a physical, mental or medical impairment resulting from anatomical, physiological, genetic or neurological conditions which prevents the exercise of a normal bodily function or is demonstrable by medically accepted clinical or laboratory diagnostic techniques; or
 - (b) a record of such an impairment; or
 - (c) a condition regarded by others as such an impairment.
- To be protected by the HRL, individuals only have to show that they have a medical impairment, they do not have to show that the impairment substantially limits one or more of their major life activities.
- The HRL also says that when dealing with employment, the term “disability” shall be limited to disabilities which, upon the provision of reasonable accommodations, do not prevent the individual from performing in a reasonable manner the activities involved in the job or occupation at issue.
- Applying the HRL’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 HRL is decided on an individualized, case-by-case basis.
 - The HRL does not necessarily protect individuals from discrimination based on current illegal drug use. The HRL statute does not exclude current illegal drug use from its definition of “disability” (as the Federal laws do), but the Division’s regulations, and some courts, have stated that the HRL does not protect drug users from discrimination based on their current illegal use of drugs, and that employers do not need to provide reasonable accommodations to people who illegally use drugs.

The HRL’s Protections Against Discrimination

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

A4. The HRL’s protections extend to:

- Employment and job training
- Housing (residential) and commercial property
- Government services and programs
- Education
- Public accommodations

Employment

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

The HRL makes it illegal for any employer covered by the law to discriminate on the basis of an individual's past, current or perceived disability.
- What employers are covered by the HRL?

New York's law reaches more employers than the Federal laws prohibiting job discrimination.

 - The HRL applies to **all** public employers (State and local government units, including school districts) and private employers in New York with **four or more** employees, including licensing and employment agencies and labor organizations.
- Are all employees in New York protected by the HRL?
 - A great many, but not all: the term "employee" does not include any individual employed by his or her parents, spouse or child, or in the domestic service of any person.
- When are employees protected by the HRL?
 - To be protected by the HRL, people with drug and alcohol related conditions must have the requisite job qualifications as well as be able to satisfactorily perform the job, with or without a reasonable accommodation.
- Are the HRL's employment discrimination provisions like those of the Federal laws explained in "Know Your Rights"?
 - Yes, in most respects, the HRL adopts the same standards and follows the same basic rules that the Rehabilitation Act and the ADA establish.
 - The HRL's non-discrimination requirements are very similar to the Federal laws' requirements in all of the following respects:
 - What constitutes unlawfully discriminatory employment policies and practices, in regard to hiring, firing, and the terms and conditions of employment, as well as job training
 - Reasonable accommodation requirements
 - Medical leave
- Are the HRL's provisions regarding medical examinations and drug and alcohol tests similar to those of the Federal laws explained in "Know Your Rights"?
 - No. The HRL is *different* from the ADA and the Rehabilitation Act regarding **medical examinations** and **drug and alcohol tests**.
 - The HRL allows pre-employment inquiries into disabilities and medical examinations *only* when an employer shows they are based on a "bona fide occupational qualification" – a qualification that is job-related and material to job performance.

- Under the HRL, testing an applicant before a job offer is made to see if he or she uses alcohol or *legal* drugs (including methadone) is considered a pre-employment inquiry and violates the HRL *unless* the employer can demonstrate that it is job-related with respect to the particular job in question.
- A test to determine *illegal* drug use is not considered a medical test under the HRL. The Division has ruled that it is legal, under the HRL, for employers to test individuals for illegal drug use (both pre-employment and on the job), and that employers can deny a job to or fire someone based on a drug test showing illegal use of drugs.

Housing Discrimination

- The HRL forbids disability-based discrimination with respect to most housing used for residential purposes as well as commercial entities used for business, providing services, and other non-residential purposes.
 - The HRL applies to residential buildings with 2 or more units (or 3 or more units if the building is owner-occupied).
- Note the hand-out explaining how Federal and NY laws limit some individuals' eligibility for public housing because of their past or current drug- or alcohol-related conduct.

Government Services and Programs

- The HRL, like the Federal non-discrimination laws, protects people from disability-based discrimination in government programs, services and activities (like zoning, occupational licensing, and driver's licenses).

Education, Health Care and Other Private Service Providers

- The HRL protects individuals with disabilities from discrimination in private educational facilities that hold themselves out to the public to be non-sectarian and tax exempt. (Because the HRL does not apply to public schools and universities, any discrimination claim against a public educational facility would have to be brought under the ADA or Rehabilitation Act.)
- Like the federal non-discrimination laws, the HRL also prohibits disability-based discrimination in other public accommodations.

Analyzing Discrimination Claims under the HRL

- Q5.** What is, and is not, likely to be considered illegal discrimination under the HRL in cases involving people with alcohol or drug problems?
- A5.** In deciding cases where individuals are alleging disability-based discrimination in violation of the HRL, both New York courts and the Division on Human Rights 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 person's disability itself.

- Acting against a person because of his or her *status* as someone with a disability may be unlawful discrimination under both the HRL and Federal laws.
 - Individuals subjected to discrimination just because they have a history of, or are in treatment or recovery from, alcoholism or addiction may have valid claims under the HRL, as well as the Federal laws.
- Acting against someone because of his or her *conduct* is not likely to be ruled unlawful discrimination in violation of the HRL or Federal laws, even if that conduct is caused by, or linked or related to, the person's disability.
 - Courts in New York and the Division have ruled that it is generally not unlawful discrimination to take action against someone based on –
 - the individual's misconduct, such as violating legitimate, uniformly applied rules or policies, including those relating to alcohol or drug use;
 - the person's arrest or conviction for a criminal offense, including drug- or alcohol-related offenses;
 - other actions or behavior that disqualify individuals from participating in particular programs, or make them ineligible to obtain or maintain particular benefits or services.
- Whether the individual is *qualified* for the job or services. It generally would not violate these laws to:
 - Deny someone a job because he is not qualified, or is unable – even with reasonable accommodations the law may require – to satisfactorily perform the essential functions and duties of the job.
 - Deny someone services, or admission to an educational program, or government benefits or programs, because she does not meet the eligibility requirements for participation.

Additional Protection in New York City

Q6. Are there other laws that protect people from discrimination in New York City?

A6. Yes, in addition to the HRL, which applies throughout New York State – including New York City – New York City has its own anti-discrimination law called the New York City Human Rights Law.

- In general, the NYC HRL is similar to the New York State HRL. However, the NYC HRL clearly states that alcoholism, drug addiction or other substance abuse is a “disability” if the individual (1) is recovering or has recovered and (2) currently is free of such abuse. The NYC HRL does consider anyone who is currently engaging in the illegal use of drugs to be “disabled.”

Remedies and Resources for Addressing Illegal Discrimination

- Q7.** What can I do if I think I have been discriminated against because of my past or current alcohol or drug problem?
- A7.** 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 New York, or if the alleged discrimination occurred in New York, you have a few options.
- You can file a complaint with the **New York State Division of Human Rights**. The complaint must be filed within *one year* of the alleged discrimination. Information on this process is included in the hand-outs and is available on the Division’s website, www.nysdhr.com, or by telephone at (718) 741-8400.
 - You can also file a **lawsuit** in state court for New York State or City HRL claims (or in federal court if you are also alleging that the discrimination violated federal law). The complaint must be filed within *three years* of the alleged discrimination.
 - 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 lawsuit after receiving a “right to sue” letter from the EEOC.
 - If you live in New York City, or if the alleged discrimination occurred in New York City, you can file a complaint with the **New York City Commission on Human Rights**. The complaint must be filed within *one year* of the alleged discrimination. Information is available on the website, www.nyc.gov/html/cchr, or by telephone, (212) 306-7450.

Note: If you are claiming discrimination that violates the State or City laws, you have the option of filing an administrative complaint with the New York State or City Human Rights agencies, or a lawsuit in court, but you cannot do both. You may:

- (1) File a complaint with the New York State Division of Human Rights;
OR
- (2) File a complaint with the New York City Commission on Human Rights;
OR
- (3) File a lawsuit in court.