

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

Oregon Laws Regarding Discrimination
(February 2007)

I. The Basics

Q1. Does Oregon 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. Oregon has a law that prohibits discrimination against individuals on the basis of disability. The State’s main anti-discrimination law is Oregon Revised Statutes, Title 51, Chapter 659A *et. seq.* We will refer to this law in this summary as the Oregon Disability Discrimination Statute.

The Oregon Civil Rights Division (“OCRD”), a division of the Oregon Bureau of Labor and Industries, is the agency charged with enforcing Oregon’s anti-discrimination laws pertaining to employment, housing, and use of public facilities. The OCRD is also assigned the responsibility of investigating claims of civil rights violations, as well as advising and educating workers about their civil rights.

- The Oregon Civil Rights Division enforces –
 - Or. Rev. Stat. § 659A.100, *et. seq.*, which makes it unlawful to discriminate against any individual in the context of employment, career schools, real property transactions, or public accommodations, on the basis of a physical or mental disability;

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

A2. Yes, though the protections vary somewhat depending on the type of discrimination.

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

A3. Yes. The OCRD describes state law as including the protections provided by the federal American with Disabilities Act (ADA).

The sections of the Oregon Disability Discrimination Statute which prohibit employment discrimination, discrimination in real property transactions, and

discrimination by a place of public accommodation, define “disabled person” as “an individual who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment or is regarded as having such impairment” (Or. Rev. Stat. § 659A.100(1)(a)).

II. Oregon Disability Discrimination Statute

Q4. In what areas of life does Oregon’s anti-discrimination law protect individuals from discrimination because of their disability?

A4. Oregon’s anti-discrimination law extends to:

- Employment
- Public accommodations
- Real property transactions

Employment Oregon Disability Discrimination Statute Or. Rev. Stat. § 659A.100 to 659A.139

Q5. Who does the Oregon Disability Discrimination Statute protect from disability-based employment discrimination?

A5. The Oregon Disability Discrimination Statute makes it illegal for an employer covered by the law to refuse to hire, employ or promote, to bar or discharge from employment or to otherwise discriminate in employment against an otherwise qualified person because the person is disabled (Or. Rev. Stat. § 659A.112). Under Oregon law, alcoholism is considered a disability and individuals undergoing treatment for drug addiction are protected from discrimination. Current use of illegal drugs is not considered a disability. An employer may hold employers who engage in current illegal drug use or who are alcoholic to the same standards as other employees, even if the unsatisfactory performance or behavior is related to the alcoholism or illegal drug use (Or. Rev. Stat. § 659A.127(5)).

Q6. What employers are covered by the Oregon Disability Discrimination Statute?

A6. The Oregon Disability Discrimination Statute applies to all employers, public or private, who employ six or more persons, excluding the Oregon National Guard (Or. Rev. Stat. § 659A.106).

Q7. Are all employees covered by the Oregon Disability Discrimination Statute?

A7. All employees are covered, except persons who work for employers of less than six persons.

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

A8. Yes, in most respects, the Oregon Disability Discrimination Statute 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, the Oregon Disability Discrimination Statute requires employers to make reasonable accommodations for employees with a disability. Examples of “reasonable accommodations” provided by the Oregon law include: job restructuring, part-time or modified work schedules, and modification of examinations, training materials or policies. (Or. Rev. Stat. § 659A.118).

Q10. Can employers make inquiries about an applicant’s criminal history?

A10. Yes, employers may make inquiries about an applicant’s criminal history.

However, if the arrest record or criminal conviction record has been set aside, it will be sealed and the individual is deemed for the purposes of the law not to have been arrested or convicted and thus may deny its existence to the employer (Or. Rev. Stat. § 137.225(3)).

Oregon also prohibits employment-related discrimination based on an individual’s expunged juvenile record (Or. Rev. Stat. § 659A.030).

Employment-related Medical Inquiries and Examinations

Q11. Are the Oregon Disability Discrimination Statute’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 – the Oregon law states that its provisions regarding discrimination against disabled persons in employment are to be construed consistently with the ADA (Or. Rev. Stat. § 659A.139).

Drug and Alcohol Testing -- Current drug use is not protected, while persons who are no longer using illegal drugs and are engaged in or have completed a

drug rehabilitation program are protected as disabled persons. Thus employers may adopt reasonable practices, including but not limited to drug testing, to ensure that persons with drug addiction histories are no longer using illegal drugs. (Or. Rev. Stat. § 659A.124(3)). Employers may not subject any employee or prospective employee to a breathalyzer test to detect the presence of alcohol, unless the individual consents. However, if the employer has reasonable grounds to believe the individual is under the influence of alcohol, the employer may condition employment or continued employment on an alcohol test (at the employer's expense) (Or. Rev. Stat. § 659A.300).

Impermissible Inquiries – Employers may not conduct medical examinations of job applicants or ask job applicants about the existence, nature or severity of any disabilities, except as relevant to job-related functions (Or. Rev. Stat. § 659A.133). Employers may not require that current employees submit to medical examinations and may not inquire about disabilities of current employees except where job-related and consistent with business necessity (Or. Rev. Stat. § 659A.136).

Permissible Inquiries – Once an offer of employment is made, employers may condition the commencement of employment on the results of a medical examination, so long as all new employees are subject to it and all medical records are kept confidential (except as they relate to certain necessary work restrictions, in emergencies, and for certain Oregon Bureau of Labor and Industries investigations) (Or. Rev. Stat. § 659A.133).

Housing Oregon Disability Discrimination Statute Or. Rev. Stat. § 659A.145

Q12. Does Oregon protect people in treatment or otherwise in recovery from alcohol or drug problems from housing discrimination?

A12. Yes. Oregon's protections are very similar to those of the federal Fair Housing Act described in the *Know Your Rights* brochure. A non-governmental non-profit organization, the Fair Housing Council of Oregon, provides education and enforcement resources for the federal Fair Housing Act, including responding to complaints when a housing provider refuses to provide reasonable accommodations to an individual with a disability.

Additionally, the Oregon Disability Discrimination Statute:

- Prohibits housing discrimination based on disability (defined as noted above, like the Federal laws) in rental or sales of any real property (including but not limited to apartments and homes), or the availability of residential real estate transactions (Or. Rev. Stat § 659A.145).

- Requires that landlords permit reasonable modifications (at the expense of the disabled person) to make space livable for a person with a disability, and that landlords make reasonable accommodations in rules, policies, practices or services when such accommodations may be necessary to afford a disabled person equal opportunity to use and enjoy a dwelling (Or. Rev. Stat § 659A.145(2)).
- Prohibits real property advertising discriminatory towards disabled people (Or. Rev. Stat § 659A.145(3)).

**Public Accommodations
Oregon Disability Discrimination Statute
Or. Rev. Stat. § 659A.142**

Q13. Does Oregon’s anti-discrimination law also protect people with histories of alcohol or drug problems from discrimination in public accommodations?

A13. Yes. The Oregon Disability Discrimination Statute prohibits disability-based discrimination by places of public accommodation (such as lodgings, facilities and amusements), as well as employment agencies, labor organizations, and state government services, programs or activities (Or. Rev. Stat. § 659A.142).

III. Analyzing Discrimination Claims under Oregon Law

While Oregon’s anti-discrimination laws likely protect individuals from discrimination because of drug or alcohol problems, there are no reported court decisions applying Oregon’s anti-discrimination laws to individuals with alcohol or drug problems.

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:

- File a complaint charging violations of Oregon’s anti-discrimination laws with the Oregon Civil Rights Division. Where federal and state law applies, a complaint filed with the Civil Rights Division of the Oregon Bureau of Labor and Industries is automatically also filed with the federal Equal Employment Opportunity Commission (this is known as dual filing). In most cases the complaint must be filed within one year of the discriminatory act (Or. Rev. Stat. § 659A.820(1)). Generally a complaint may not be filed with the OCRD once a civil action regarding the same

matter has been commenced in state or federal court (Or. Rev. Stat. §§ 659A.820(2) & 659A.870(1)), although the rules are relaxed for housing-related cases.

- You may also file a lawsuit in state court (Or. Rev. Stat. § 659A.885).

For cases related to employment or public accommodation discrimination:

- There is no requirement that you file a complaint with the OCRD first before filing a lawsuit in court (Or. Rev. Stat. §§ 659A.870(2)).
- A civil court action must be commenced within a year of the discriminatory act, unless the individual filed a timely complaint with the OCRD (Or. Rev. Stat. § 659A.875(1)). If a complaint is filed first, you have 90 days from the date of an adverse decision by the OCRD to file a lawsuit in state court, or 90 days from the one-year anniversary of the filing of the complaint (whichever comes first) (Or. Rev. Stat. § 659A.880(1)-(3)).

For cases related to housing discrimination:

- There is no requirement that you file a complaint with the OCRD first before filing a lawsuit in court (Or. Rev. Stat. §§ 659A.870(2)).
- While filing a civil action is not a waiver of the right to file a complaint with the OCRD, if an individual has filed both an OCRD complaint and a civil court action the OCRD will dismiss the complaint upon the commencement of trial in the civil action (Or. Rev. Stat. § 659A.870(3)). Similarly, the filing of an OCRD complaint is not a waiver of the right to file a civil action, but a civil action may not be filed after a hearing has commenced on an OCRD complaint (Or. Rev. Stat. § 659A.870(4)).
- An action must be commenced within two years of the occurrence or termination of the discriminatory practice, unless an administrative proceeding has been pending (Or. Rev. Stat. § 659A.875(3)). If a complaint is filed first, you have 90 days from the date of an adverse decision by the OCRD to file a lawsuit in state court, or 90 days from the one-year anniversary of the filing of the complaint (whichever comes first) (Or. Rev. Stat. § 659A.880(1)-(3)).

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 180-day deadline may be extended to 300 days if the charge is also covered by a state or local anti-discrimination law.

- The Seattle Field Office of the U.S. EEOC has jurisdiction over the state of Oregon and is located at the Federal Office Building, 909 First Avenue, Suite 400, Seattle, WA 98104-1061, tel. (800)-669-4000, and is open Monday – Friday from 8:00am to 4:30p.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.

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