

Pennsylvania: Laws Regarding Discrimination, Alcohol and Drug Use and Addiction

(September 2006)

The Basics

Q1. Does Pennsylvania (“PA”) have any State law, like the Federal laws discussed in the “**Know Your Rights**” brochure, that protect people, or may protect them, from being subjected to discrimination because they have a history of alcohol or drug problems – or are in treatment or in recovery from these problems?

A1. **Yes.** The Commonwealth of Pennsylvania has two civil rights laws that prohibit discrimination against individuals on the basis of a “handicap or disability.” The State laws that protect people from disability-based discrimination are closely modeled on the three main Federal laws featured in “**Know Your Rights**” – the Americans with Disabilities Act (ADA), the Rehabilitation Act, and the Fair Housing Act.

These laws, which this summary calls the **PA non-discrimination laws**, are:

- **Pennsylvania Human Relations Act – PHRA**
 - Prohibits discrimination in many areas of life (see Q5).
 - The statute: 43 P.S. §§ 951-963.

- **Pennsylvania Fair Educational Opportunities Act**
 - Addresses discrimination in education, specifically.
 - The statute: 24 P.S. §§ 5001-5010.

These State laws’ coverage of individuals with disabilities is generally considered “co-extensive” with the Federal disability discrimination laws, and with the Americans with Disabilities Act (ADA) and the Rehabilitation Act in particular. Both the courts and the Pennsylvania Human Relations Commission (the administrative agency responsible for enforcing the State’s civil rights laws), have said that the State laws should be interpreted consistently with the Federal disability discrimination laws. *See*, most recently, *Kaniuka v. Good Shepherd Home*, 2006 WL 2380387 (E.D.Pa. Aug. 15, 2006) (“[t]he PHRA is generally applied in conformance with the ADA, and ‘Pennsylvania courts . . . generally interpret the PHRA in accord with its federal counterparts..’) (citations omitted)

Knowing how the Federal laws apply in cases where people complain of discrimination based on their past, current or perceived alcohol or drug problems, including alcoholism and other drug dependence (addiction), can therefore be a useful guide to understanding how PA’s own disability discrimination laws have been interpreted, or are likely to be, in future cases.

- **The Pennsylvania Human Relations Commission – PHRC** – is the State administrative agency responsible for enforcing these State laws.
 - **PHRC** accepts, investigates and can resolve complaints alleging discrimination in violation of the Pennsylvania Human Relations Act and Fair Educational Opportunities Act.
 - If Federal laws also cover an individual’s discrimination claims, **PHRC** can also accept these for dual processing with the appropriate Federal agency.
 - See the **PHRC’s** informational brochures in the hand-outs.

Q2. Are people with **alcohol or drug problems (including alcoholism and addiction to other drugs)** considered individuals with a “disability” who are or may be protected from discrimination by PA’s non-discrimination laws?

A2. While the answer is not yet completely clear under PA law, in particular individuals’ cases –

- **alcoholism** (past, current or perceived) has been recognized as a covered disability within the protection of the PA non-discrimination laws; and
- the same may be true for past or perceived **drug dependence (addiction)**, but not for current illegal drug use or addiction.

Pennsylvania State laws’ protection of people who have, are being treated for, or are in recovery from, alcohol and other drug problems is evolving, case by case, as the PHRC and courts decide the specific cases that come before them. **Q&A #4**, below, summarizes the current state of the case law on these issues under the PA non-discrimination laws.

Q3. In specifying who is protected from disability-based discrimination under PA’s non-discrimination laws, does Pennsylvania define “**disability**” the same way the Federal non-discrimination laws do?

A3. Yes. Both of PA’s non-discrimination laws use essentially the same definition of “disability” as the Federal laws noted in Q&A #1, including the ADA and the Rehabilitation Act.

- General definition. Under the PA non-discrimination laws, a “handicap or disability” means:
 - (1) a physical or mental impairment which substantially limits one or more of a person’s major life activities;
 - (2) a record of having such an impairment; or
 - (3) being regarded as having such an impairment –

except – like the Federal laws – the PA laws specify that this “does **not** include current, illegal use of or addiction to a controlled substance [as defined in the Federal Controlled Substances Act].” See **PHRA**, 43 P.S. § 954(p).

- Applying PA’s definition in practice: As is the case with the Federal laws noted in Q&A #1 and explained in the “**Know Your Rights**” brochure–
 - Whether a particular person has a “disability” within the meaning and coverage of the PA non-discrimination laws is decided on an individualized, case-by-case basis.
 - To be protected as an individual with a “disability” under PA law, a person must be able to demonstrate that he or she has an impairment that substantially limits (or in the past, limited) that individual’s own major life activities, or that he or she is regarded (even erroneously) as having a such a substantially limiting impairment.
 - Like the Federal laws, the PA non-discrimination laws do **not** protect individuals who are not found to have a “substantially limiting” impairment – one that significantly limits or, in the past, limited the individual’s major life activities, or that is perceived (“regarded as”) as being substantially limiting, even when it does not actually impose any limitations on the individual’s ability to function.
 - Like the Federal laws, the PA non-discrimination laws do **not** protect individuals from discrimination based on a person’s “current, illegal use of or addiction to a controlled substance.” Illegal use or addiction in this sense covers both –
 - use of or addiction to illegal drugs (like heroin or cocaine), and
 - misuse (abuse) of controlled substances for which there are legitimate and legal uses, such as prescription medications (e.g., pain medications; tranquilizers; other prescribed drugs). For example, using prescription drugs obtained with a forged or fraudulent prescription, or abusing prescribed drugs, would fall in this category.

Q4. What kinds of cases involving claims of discrimination based on individuals’ histories of alcohol or drug problems have been decided under the Pennsylvania non-discrimination laws?

A4. Here is a snapshot of the current state of the case law in Pennsylvania:

- **Alcoholism and other past, perceived or current alcohol problems**

1. *Pennsylvania Human Relations Commission (PHRC)*

- First PHRC case ruling that an person in recovery from alcoholism has a “disability” under the Pennsylvania Human Relations Act and is protected from discrimination based on her disability.
 - In a case decided in September 2004, the PHRC ruled: “Under the facts of this case, Remick [the complainant] is “disabled” not only because she has the progressive disease of alcoholism, a condition that has serious life implications, Remick is also “disabled” because she has a history of alcoholism. Generally, there can be little doubt that alcoholism is a disability for the purposes of the PHRA. . . . [W]e find that Remick’s history of alcoholism qualifies as a disability within the meaning of the PHRA.” Remick v. Wilkins & Associates Real Estate, Inc., PHRC Docket No. E-91253-H, at 12-13 (2004).
 - In analyzing and deciding this case under PA law, the PHRC looked to decisions reaching the same conclusion in cases interpreting parallel Federal laws, including the Rehabilitation Act and the Americans with Disabilities Act.
 - The PHRC will accept discrimination complaints from individuals with past, perceived or current alcohol problems, including people complaining of discrimination based on their being in treatment (currently or in the past) for, and in recovery from, alcohol abuse or alcoholism.

2. *Pennsylvania court decisions*

- No State or federal court decision yet on alcoholism as a “disability” under PA non-discrimination laws.
 - It has not yet been determined by Pennsylvania courts whether alcoholism is, or in particular individuals’ cases may be, considered a protected “disability” under the Pennsylvania Human Relations Act (PHRA).
 - Cases claiming discrimination based on past, current or perceived alcohol problems in violation of the PHRA have been brought in State courts, but in deciding those cases the courts have not yet ruled whether alcoholism (or other alcohol problems) is or may be a covered “disability” under PA law.
 - Pennsylvania courts have analyzed (and will likely continue deciding) discrimination claims under PA law in light of cases interpreting the Federal laws, including the Rehabilitation Act and the Americans with Disabilities Act.

- **Drug use or addiction: past or perceived drug problems**

1. Remember: *current* illegal use of or addiction to drugs (legal or illegal) is excluded from protection under the PHRA and the Fair Educational Opportunities Act.
2. *Pennsylvania Human Relations Commission*
 - No PHRC decisions yet on whether past or perceived drug use or addiction is or may be a covered “disability” under the PHRA.
 - The PHRA’s coverage of past or perceived drug problems is not yet clear under PHRC decisions. The PHRC has not yet issued a public decision on whether people in treatment for and/or in recovery from drug problems, including addiction, are protected by the PA non-discrimination laws.
 - The PHRC will accept complaints from people claiming discrimination based on their past or perceived drug problems, including those complaining of discrimination based on their being in treatment for and in recovery from addiction.
3. *Pennsylvania State court decisions*
 - No State court decision yet on addiction as a “disability” under PA non-discrimination laws.
 - Pennsylvania courts have not yet decided whether the PHRA protects individuals in recovery from and/or in treatment for drug problems including addiction.
 - Cases claiming discrimination based on past, current or perceived drug problems in violation of the PHRA have been brought in State courts, but in deciding those cases the courts have not yet ruled whether addiction (or other drug problems) is or may be a covered “disability” under PA law.
 - Pennsylvania courts have analyzed (and will likely continue deciding) discrimination claims under PA law in light of cases interpreting the Federal laws, including the Rehabilitation Act and the Americans with Disabilities Act.

PA Laws’ Protections Against Discrimination in Particular Contexts

- Q5.** In what areas of life do Pennsylvania’s laws protect individuals from discrimination because of their current or past disability, or because they are “regarded” (even wrongly) as having a disability?
- A5.** The PA non-discrimination laws’ protections extend to:
- Employment and job training, when the person’s disability is “non-job related” (see Employment below)
 - Housing (residential) and commercial property used for offices, business, services, etc.

- Government services and programs
- Education (public and private, all levels)
- Public accommodations (including private health care, social services, and other entities offering their services and facilities to the public).

Employment

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

The Pennsylvania Human Relations Act makes it illegal for any employer covered by the Act to discriminate on the basis of an individual's past, current or perceived **“non-job related handicap or disability.”**

- This means “any handicap or disability which does not substantially interfere with the ability to perform the essential functions of the employment which a handicapped person applies for, is engaged in or has been engaged in.”
- The PHRA specifically provides: “Uninsurability or increased cost of insurance under a group or employee insurance plan does not render a handicap or a disability job related.” 43 P.S. § 954(p).

- What employers are covered by the PHRA?

Pennsylvania's law reaches more employers than the Federal laws prohibiting job discrimination, including the Americans with Disabilities Act and the Rehabilitation Act.

- The PHRA applies to **all** public (State and local government units, including school districts) and private employers in Pennsylvania with four or more employees, including employment agencies and labor organizations.
- With respect to discriminatory practices based on a non-job related handicap or disability, the term ‘employer’ includes religious, fraternal, charitable and sectarian corporations and associations, as long as they employ four or more persons within the Commonwealth.

- Are all employees in Pennsylvania protected by the PHRA?

- A great many, but not all: the term “employee” does not include (1) any individual employed in agriculture or in the domestic service of any person, (2) any individuals who, as part of their employment, reside in the personal residence of the employer, (3) any individual employed by said individual's parents, spouse or child.

- Are the PHRA's employment discrimination provisions protecting people with past, current or perceived disabilities like those of the Federal laws explained in **“Know Your Rights”**?

- Yes, in most respects, both the PHRA (and the PHRC regulations interpreting and implementing the Act’s employment provisions) adopt the same standards and follow the same basic rules that the Rehabilitation Act and the Americans with Disabilities Act establish.
- The PHRA’s non-discrimination requirements are very similar to the Federal laws’ requirements (explained in “**Know Your Rights**”) in all of the following respects:
 - What constitute unlawfully discriminatory employment policies and practices, in regard to hiring, firing, and the terms and conditions of employment, as well as job training.
 - Rules regarding permissible and illegal medical inquiries and examinations – pre-employment, and on the job.
 - Workplace drug and alcohol testing.
 - Reasonable accommodation requirements.
 - Medical leave:
 - Denying a qualified individual leave from work, for example to obtain treatment for an alcohol or drug problem, may violate the PHRA as well as applicable Federal non-discrimination laws.
 - Although Pennsylvania does not have its own State law like the Federal Family Medical Leave Act (FMLA), this Federal law applies to many covered employers in Pennsylvania, as in other States (see “**Know Your Rights**”). Therefore, if a Pennsylvania employer is covered by the FMLA, denying leave for alcohol or drug treatment may violate the FMLA as well as the PA and Federal non-discrimination laws.

Housing Discrimination

- The PHRA forbids disability-based discrimination with respect to both housing used for residential purposes and commercial entities used for business, providing services, and other non-residential purposes.
- Note the hand-out explaining how Federal and PA laws limit some individuals’ eligibility for public housing because of their past or current drug- or alcohol-related conduct.
- The Harrisburg Human Relations Ordinance reiterates Title VIII and also prohibits housing discrimination on the basis of ancestry, place of birth, age, handicap/disability, marital status, and sexual preference/orientation and familial status. This Ordinance makes it unlawful for owners to discriminate in the sale or rental of housing and for lending institutions to discriminate in lending, guaranteeing loans or accepting mortgages.

The Ordinance affects any building, structure or portion thereof which is used or occupied or is intended, arranged or designed to be used or occupied, as the home

residence or sleeping place by a person, family or by a group of persons living together In the City of Harrisburg.

The Ordinance exempts a building or structure containing living quarters occupied or intended to be occupied by no more than two Individuals, two groups or two families living independently of each other and used by the other thereof as a bona fide residence for himself and any member of his family forming his household.

The Ordinance makes it illegal for owners to exclude broad categories of tenants and mortgage applicants based on any of the prohibited factors. Owners will have to look at each individual's ability to rent or buy property, and each individual's credit worthiness. If a person believes he or she has been discriminated against they can file a complaint with the Harrisburg Human Relations Commission, 123 Walnut Street, 255-3037. Those acts occurring outside the City of Harrisburg should be reported to the Pennsylvania Human Relations Commission, 787-9781.

Government Services and Programs

- PA non-discrimination laws, like the Federal non-discrimination laws, protect 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 Providers of Services

- The PHRA and the Pennsylvania Fair Educational Opportunities Act together protect individuals with disabilities from discrimination in virtually all –
 - Public educational facilities
 - Private educational facilities
- Like the federal non-discrimination laws, the PA laws also prohibit disability-based discrimination in other public accommodations.

Applying Pennsylvania's Discrimination Laws in Practice: Analyzing Potential Discrimination Claims and Cases

- Q6.** What is, and is not, likely to be considered illegal under Pennsylvania State law, including in cases involving people complaining of discrimination based on their past, current or perceived alcohol or drug problems?
- A5.** In deciding cases where individuals are alleging disability-based discrimination in violation of the PA non-discrimination laws (as well as Federal law), both Pennsylvania courts and the PHRC commonly apply these general concepts:
- No protection for **current illegal use of or addiction to drugs.**

- **Issue: status vs. conduct. What is the reason for the discriminatory act, policy or practice being complained of? Was or is it based on the individual's status as a person with a disability protected by law? That is, was or is it motivated by the person's disability itself (as opposed to conduct)?**
 - Acting against a person because of his or her *status* as someone who has, once had, or is regarded as having a disability within the meaning of the non-discrimination laws may be unlawful discrimination under PA law, as well as Federal law.
 - Individuals subjected to discrimination just because they have a history of, or are treatment or in recovery from, alcoholism or addiction – or are regarded as having such alcohol or drug problems – may have valid claims under the PA laws, 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 PA or Federal laws, even if that conduct is caused by, or linked or related to, the person's disability (including alcohol or drug use disorders).
 - Courts in Pennsylvania, and the PHRC, have ruled that it is generally not unlawful discrimination under the PA or Federal laws to take action against someone based on –
 - the individual's misconduct, such as violating legitimate, uniformly applied or 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 get or keep particular benefits or services (e.g., driver's licenses, occupational licenses, etc.)
- **Issue: Is the adverse action motivated by something other than the individual's disability? And does that other reason provide a legal, legitimate or justifiable basis for the discriminatory action, practice or policy being complained of?**
 - Acting against a person for reasons *other* than having a disability would generally not be considered illegal discrimination in violation of either the PA or Federal laws that protect people from disability-based discrimination. It generally would not violate these laws, for example, 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.
- Exclude a person who poses a direct threat to the health or safety of others.
- How to analyze “disparate impact” claims

Issue: Is the stated reason for the alleged discriminatory action, practice or policy the real reason for what happened – or is it just a pretext for discriminatory actions or practices that are really motivated by the individual’s disability – or particular kinds of disabilities protected by the law?