

ARE YOU SOMEBODY WITH...

- HIV/AIDS?
- AN ALCOHOL OR DRUG HISTORY?
- A CRIMINAL RECORD?

If so, then there is a good chance you have suffered illegal discrimination.

Does this sound familiar?



YOU CAN PROTECT YOURSELF IF YOU
LEARN YOUR RIGHTS!

WHO SHOULD READ THIS BOOKLET?

This booklet is for New Yorkers with HIV or AIDS, a history of drug or alcohol problems, and/or a criminal record who want to know their rights so they can be free of discrimination. It is especially intended for people who face discrimination because of more than one of these issues, for example, people who contracted HIV as a result of drug or alcohol use or who have criminal convictions related to a past addiction.

HOW THIS BOOKLET CAN HELP YOU PREVENT DISCRIMINATION

This booklet will help you *prevent* discrimination in employment, housing, health care and elsewhere and will help you *exercise your rights* if you do face discrimination. It will tell you about —

- laws that forbid discrimination against people with HIV/AIDS, alcohol or drug addiction, and criminal records
- limits on what employers, landlords, and others may ask about your HIV status, alcohol or drug addiction, or criminal record
- how you can get a job or housing even if you have HIV/AIDS, an alcohol or drug addiction, or a criminal record
- what you can do when confronted with illegal discrimination.

There is plenty of discrimination out there. But that does not mean you cannot *do something* to overcome it. Your chances improve if you LEARN THE RULES and PREPARE.

WHICH LAWS PROTECT YOU FROM DISCRIMINATION?

Federal and state laws outlaw discrimination against people with “disabilities” – a legal term that includes HIV/AIDS and drug and alcohol addiction. People with HIV/AIDS, people in recovery from drug addiction (but not people currently using drugs illegally), and people with a past or current alcohol problem generally are protected from discrimination under these laws. These laws include the federal Americans with Disabilities Act (ADA), the Rehabilitation Act of 1973, and the Fair Housing Act, as well as the New York State and New York City Human Rights Laws. The State and City Human Rights Laws also outlaw job discrimination based on a criminal record, as does the New York Correction Law, Article 23-A.

JOB DISCRIMINATION

PROTECTIONS FOR PEOPLE WITH HIV/AIDS & ALCOHOL OR DRUG HISTORIES

May an employer deny you a job, fire you, or treat you differently because you have HIV/AIDS? An addiction history?

Generally not. If you are qualified for the job, it is illegal for an employer to discriminate against you because you have HIV or AIDS, a past drug problem, or past or current alcohol problem, or because you are in treatment, including methadone treatment. Each of these conditions is considered a “disability” under laws that outlaw discrimination against people with disabilities. But you are *not* protected by these laws if you are *currently* using drugs illegally.

It *is* legal, however, for an employer to fire you for not doing your job or for violating workplace rules. For example, if you failed to call in to report a sick day, as your job requires, it is legal for your boss to fire you even if your HIV-related illness or alcoholism is the reason you were home sick.

Must an employer give you an “accommodation” if you have HIV/AIDS or an alcohol or drug history?

If you have a disability, you are entitled to a “reasonable accommodation,” such as changes in your work schedule, if it is necessary to allow you to perform your job. The only reason the employer would not need to make an accommodation is if it would be too costly or too much of a burden. But you usually *need to ask for the accommodation*, and you may need to provide documentation from your doctor.

How do employers learn about your HIV status? What about your alcohol or drug history?

Employers often find out that you have HIV/AIDS or an alcohol or drug history through—

- health related questions on job applications and in interviews
- medical exams or medical questionnaires
- drug tests
- drug or alcohol-related arrests or convictions

What does an employer have the right to know?

It depends on *when* the employer is asking.

Job Applicants. Before offering you a job, employers may *not* ask about your disabilities. These questions are *illegal*:

- “Do you have HIV or AIDS?”

-
- “Have you ever been in alcohol or drug treatment?”
 - “Have you ever been addicted to drugs or alcohol?”

But it is *legal* for employers to ask whether you have a physical or mental condition that might prevent you from performing the job. They may also ask about current or past alcohol or illegal drug *use*. Examples of *legal* questions are:

- “Have you ever used illegal drugs?”
- “Do you drink alcohol?”
- “Have you ever been convicted of driving under the influence?”

It is also legal to require a drug test. But it is illegal for an employer to ask questions about how much you drink or how much you used drugs because those questions might reveal an addiction.

After job offer – before job starts. After making a job offer that is conditioned on passing a medical exam or doing a medical questionnaire, it is legal for employers to require you to pass a medical exam *as long as everyone* offered the same position is required to take a medical exam. For example, it is illegal for an employer to ask only you to take a medical exam and drug test just because the employer knows you are in recovery.

Current Employees: Once you start work, your employer may only require a medical exam or ask for medical information if the employer reasonably believes that you have a medical condition that could hurt your job performance or pose a “direct threat” in the workplace.

Does your employer have to keep your medical information confidential?

Yes, if the employer gets the information from a required medical exam (pre- or post-employment) or a voluntary

health program on the work site. Your employer must also keep the confidentiality of any HIV information that your health care providers give your employer with your written consent, and any alcohol or drug treatment information provided by your treatment program, with your written consent. If you – or your co-workers – tell your employer about your disability in any other context, however, the employer may not need to keep that information confidential. For example, if you tell your boss you are upset because you just found out you have HIV, your boss would not have to keep that information confidential.

Is it legal for your doctor to tell your employer that you have HIV/AIDS?

Only with your written consent to disclose your HIV status. New York law (Article 27-F of the Public Health Law) requires most health and social service providers to keep HIV information confidential. (For more information, see *HIV/AIDS: Testing, Confidentiality & Discrimination. What you need to know about New York Law*, listed at the end.) But if your employer legally requires this information (see pages 3 and 4), and you do not sign a consent form for your doctor to disclose your HIV status, the employer may legally deny you the job. Have your doctor read medical questionnaires carefully to make sure HIV information really is required.

Is it legal for your alcohol or drug treatment program to give information to your employer about your treatment?

Not without your written consent. Federal confidentiality laws require alcohol and drug treatment and prevention programs to get written consent before disclosing information about their patients' alcohol or drug treatment. This is true even if your employer has required you to attend a treatment program. As noted above, however, your employer may sometimes legally require documentation

about your treatment. If you do not consent to the program's providing that information, you might be fired.

What can you do if an employer asks an illegal question or discriminates against you?

Call the New York State Division of Human Rights at (718) 741-8400, New York City Commission on Human Rights at (212) 306-7500, U.S. Equal Employment Opportunity Commission at (800) 669-4000, or Legal Action Center at (212) 243-1313. There are deadlines, so call soon after the illegal act occurs!



PROTECTIONS FOR PEOPLE WITH CRIMINAL RECORDS

Do you have a criminal record?

To understand your rights, you need to know if you have a criminal record and what is on it. The fact that you have been arrested does not always mean you have been convicted of a “crime.” Here are some helpful definitions:

- felonies and misdemeanors – these are “crimes.” If you have been convicted of a felony or misdemeanor, you have a “criminal conviction,” even if you pled guilty and did not serve any time.
- violations (both sealed and unsealed) – these are non-criminal convictions, or “offenses.” If you have been convicted of a violation, but have no felony or misdemeanor convictions, then you do not have any “criminal convictions.”

-
- youthful offender adjudications (YOs) – these are *not* “convictions” or “crimes,” but rather adjudications for eligible youth ages 16-18.

How can employers find out about your criminal record?

Employers often find out that job applicants have a criminal record by:

- questions on job applications and in interviews.
- getting a criminal background report (sometimes called a “credit report” or “consumer report”) from the courts, which has information about your criminal history. It is legal for these reports to include felonies and misdemeanor convictions, but *not* (1) arrests that did not lead to a conviction, (2) non-criminal offenses, such as disorderly conduct violations, or (3) YOs.
- fingerprinting you and getting your “rap sheet” from the New York State Division of Criminal Justice Services. Only employers in certain industries and the government may do this. It is legal for these reports to include felonies, misdemeanors and unsealed violations, but not sealed violations or YOs.

May an employer deny you a job or fire you because of your criminal record?

It is illegal for an employer to deny you a job, fire you, or discriminate against you because of your past arrests that did not lead to a conviction, sealed violations, or youthful offender (YO) adjudications. These protections are in Article 23-A of the New York Correction Law.

This same law also makes it illegal for employers to unfairly deny you a job or fire you because of past convictions. An

employer may only deny you a job or fire you because of your criminal convictions if they are “directly related” to the job in question, or if hiring you would create an “unreasonable risk” to the safety of people or property. In making that decision, an employer must consider your age at the time of the conviction and the number of years that have passed, the duties of the job, and evidence of your rehabilitation, including whether you got a Certificate of Relief from Disabilities or Certificate of Good Conduct (details below). Employers who simply refuse to hire individuals with felonies or other types of convictions are violating the law! These same rules apply to agencies that issue licenses to work in various occupations.

There are other laws that make it difficult for people with certain felonies or misdemeanors to work in specific industries. For example, people with some criminal convictions may not work in parts of the banking industry and may have a hard time getting a job in the home health care field. There are similar restrictions – often called “good moral character” requirements – for getting certain occupational licenses. The good news is that sometimes you can overcome these restrictions by showing that you have been rehabilitated (details below).

May employers ask about your criminal convictions?

Yes. In New York, it is legal for employers to ask about your criminal convictions. But it is *illegal* for employers to ask about sealed violations – which are non-criminal offenses, and about Youthful Offender (YO) adjudications. Unfortunately, the law does not specifically give you the right to lie or not answer illegal questions about sealed violations and YOs.

May employers ask about arrests?

No. It is illegal in New York for employers to ask about

arrests that were not followed by conviction. If you are asked such a question, and you were acquitted or all the charges were dismissed, you do not need to list the arrest. You should, however, list your criminal convictions, including any misdemeanors and felonies.

Should you tell the truth about your criminal convictions on a job application?

Yes. Tell the truth. While it is tempting to lie in the hope that the employer will not find out about your criminal record, more and more employers are running criminal background checks, so they likely will find out anyway.

If you lie about your convictions and get the job, may an employer legally fire you when the truth comes out?

Yes. If you lie (even if you leave out some information or leave the answer blank), the employer legally may deny you the job or fire you because you lied or did not answer completely. This is true even if your criminal record should not have disqualified you or you would have been a good employee.

How can you improve your chances of getting a job?

Your chances will improve greatly if you prepare in advance! Try taking the following steps:

Get and clean up your rap sheet. You cannot correctly answer criminal record questions on a job application if you do not know what is on your rap sheet. Find out what is on your rap sheet and correct any mistakes, which unfortunately are very common. You can get your rap sheet by contacting the New York State Division of Criminal Justice Services (DCJS), (518) 457-9847 or the Legal Action Center, (212) 243-1313. Read *How to Get and Clean Up Your New York State Rap Sheet* (listed at the end).

Upgrade your less-than-honorable military discharge.

Contact the Board of Correction of Naval Records ((703) 614-1402) (Navy and Marines), Army Review Board Agency ((703) 607-1600), or Air Force Military Personnel Center (attn: DPMDOA1, Randolph AFB, TX 78150-6001) to see if you are eligible.

Get a Certificate of Relief from Disabilities or Certificate of Good Conduct. These certificates show that New York State considers you to be “rehabilitated” and they also remove some legal barriers that prevent people with criminal records from getting certain jobs or licenses. Read *Certificates of Relief from Disabilities and Certificates of Good Conduct* (listed at the end of this booklet).

Sell yourself. Many employers assume that someone with a criminal record will not be a good employee and will commit more crimes. Be prepared to show the employer all the positive things you have done since your convictions. Read *How to Gather Evidence of Rehabilitation* (listed at the end of this booklet).

What can you do if you were denied a job or fired because of your criminal record?

Step 1: Try to find out if you were denied the job because of your criminal record (not something else). New York law gives you the right to ask the employer for a letter stating why it denied you the job. For a sample, see *Sample letter requesting reason for job denial and copy of background report* (listed at the end).

Step 2: If the employer denied you a job or fired you because of criminal record information on a consumer report, ask the employer for a copy of the consumer report. Federal law requires the employer to give you the report *before* the job denial or termination, but employers often do not. The employer must also give you the name, address and phone number of the credit reporting agency that issued

the report. That agency must give you the report free of charge if you ask for it within 60 days of the job denial or termination.

Step 3: Make sure the criminal record information the employer used was correct! If the background report gave wrong information about your criminal record, bring proof to the employer and ask the employer to change its decision. Also contact the credit reporting agency and demand that the agency correct your report. Federal law requires them to correct mistakes.

Even if the criminal record information was correct, the employer might have violated Article 23-A of the New York Correction Law, described above. If you believe the employer violated this law, call the New York State Division of Human Rights at (718) 741-8400, or New York City Commission on Human Rights at (212) 306-7500. Or call the Legal Action Center at (212) 243-1313 on a Tuesday or Friday.



HOUSING DISCRIMINATION

PROTECTIONS FOR PEOPLE WITH HIV/AIDS & ALCOHOL OR DRUG PROBLEMS

May a landlord refuse to rent to you because you have HIV/AIDS or an addiction history?

No. A real estate broker or anyone renting (or selling) a home or apartment, may not discriminate against you because you have HIV/AIDS or an alcohol or drug problem, if you otherwise qualify for the housing. Persons with HIV/AIDS, past alcohol or drug problems, and current alcohol

problems are considered persons with disabilities under the law, just as they are for employment. BUT the law does *not* protect you if you are currently using drugs illegally.

May a landlord ask about your HIV status or drug or alcohol problem?

No. Landlords, sellers, and brokers may not ask you about your HIV/AIDS or drug or alcohol history but they *may* ask you about illegal drug use and refuse to rent or sell to you if you are currently using drugs illegally.

What if a landlord finds out about your HIV/AIDS or drug or alcohol history? May the landlord evict you?

No. A landlord may not harass or evict you because of your disabilities. But it is legal to evict you for using drugs illegally or selling drugs.

May your landlord or neighbors legally tell others that you have HIV/AIDS?

Usually, yes. New York's HIV confidentiality law does not apply to landlords and neighbors. It only applies if your landlord or neighbor learned your HIV status from your health or social service provider after you signed a consent form permitting that disclosure.

What can you do if you were denied housing because of your HIV status or drug or alcohol problem?

Call the New York State Division of Human Rights at (718) 741-8400, New York City Commission on Human Rights at (212) 306-7450, or Legal Action Center at (212) 243-1313. There are deadlines, so call soon after the illegal act occurs!

PROTECTIONS FOR PEOPLE WITH CRIMINAL RECORDS

May a landlord refuse to rent to you because of your criminal record?

Yes. Unfortunately, New York does not have a law that protects you from housing discrimination based on your criminal record. The New York City Housing Authority even has special rules that disqualify people with some criminal convictions from admission. But these disqualifications can be lifted if you can prove that you have been rehabilitated. For more information, see *How to Get Section 8 or Public Housing Even with a Criminal Record* (details at the end of this booklet).



OTHER TYPES OF DISCRIMINATION

PROTECTIONS FOR PEOPLE WITH HIV/AIDS & ALCOHOL OR DRUG PROBLEMS

Who else – besides employers and housing providers – may not discriminate against people with HIV/AIDS or an addiction history?

The anti-discrimination laws described above also apply to –

- “Public accommodations”. These are privately run places and services that are open to the public, like hotels, theaters, restaurants, health care providers, schools, and camps. For example, doctors and dentists may not refuse to treat you because you have HIV/AIDS. This is true even if you are *currently using drugs illegally*. While current users are not protected from job

discrimination they are protected from discrimination by health care providers.

To file a complaint for this type of discrimination, call the New York State Division of Human Rights at (718) 741-8400, New York City Commission on Human Rights at (212) 306-7450, or U.S. Department of Justice at (800) 514-0301.

- Government agencies and programs, such as public assistance, Medicaid, and job training programs. To file a complaint against a government agency, contact the federal agency that finances, provides, or regulates the program.

Can you be denied life insurance because you have HIV/AIDS?

Yes. It is legal for insurers to require an HIV test and deny you insurance if you are HIV-positive.

Can you be denied health insurance because you have HIV?

No. It is illegal to deny someone health insurance because of their HIV status. This is true whether you buy the insurance on your own or get it through work. In many cases, however, insurance companies do not have to cover your HIV-related treatment for the first 12 months of your coverage.

PROTECTIONS FOR PEOPLE WITH CRIMINAL RECORDS

Are people with criminal records protected from discrimination in anything besides employment and occupational licensing?

No. The anti-discrimination protections only apply to employers and occupational licensing agencies.



FOR MORE INFORMATION

For more information, read the following Legal Action Center publications, which you can download free of charge at www.lac.org. Click on “free publications” and then on “criminal justice” or “HIV/AIDS,” depending on the publication.

- *HIV/AIDS: Testing, Confidentiality & Discrimination. What you need to know about New York Law*
- *How to Get and Clean Up Your New York State Rap Sheet*
- *Certificates of Relief from Disabilities and Certificates of Good Conduct*
- *How to Gather Evidence of Rehabilitation*
- *Know Your Rights: Understanding Juvenile & Criminal Records and Their Impact on Employment in New York State*
- *How to Get Section 8 or Public Housing Even With a Criminal Record*
- *Sample letter requesting reason for job denial and copy of background report*

Or call the Legal Action Center at (212) 243-1313. If your question is about a criminal record, you may be told to call back at a later date because unfortunately, the Center gets far more criminal record-related calls than its staff can handle. If you have HIV or an alcohol or drug problem and tell the receptionist, you may get help more quickly. The Center has special funding to deal with those calls.

Good luck. Remember: You can overcome discrimination if you know your rights!

The Legal Action Center is a non-profit, public interest organization that works on legal issues involving criminal records, alcohol and drug problems, and HIV/AIDS.

This publication was made possible through the generous support of the New York State Department of Health, AIDS Institute.

*Copyright ©2007.
Legal Action Center
All rights reserved*

A publication of

THE LEGAL ACTION CENTER

225 Varick Street

New York, NY 10014

Phone: (212) 243-1313

Fax: (212) 675-0286

Website: <http://www.lac.org>



2007