



**Questions and Answers from
Webinar: *Medication Assisted Treatment:
Special Anti-Discrimination Issues***

NOTE: We answered a substantial number of the questions received; however, we did not answer questions that did not directly relate to the topics of the webinar series. We also did not answer questions that were unclear – which can easily happen in a webinar because the presenter does not know at what point the question was asked and does not have the opportunity to ask for clarification. We apologize, but hope that the many questions we did answer will be helpful.

Q: If a health professional is found to be diverting drugs while on the job and admits to having a substance abuse problem, does the employer violate the ADA by firing the person?

A: No. Firing someone because they engaged in illegal activity in the workplace or violated workplace rules does not violate the ADA because the termination was based on the underlying conduct (diverting drugs, in this case), and not the disability. This is true even if the underlying conduct is caused by the disability. Moreover, people currently engaging in the illegal use of drugs are not protected by the ADA when they are terminated on the basis of such use.

Q: Would suboxone treatment also be considered as MAT and fall under this law?

A. We understand your question to be: is someone who receives MAT with suboxone considered an individual with a “disability” under these anti-discrimination laws? The answer to this question is that if someone is being treated with suboxone for opioid addiction, and is no longer engaging in the illegal use of drugs, then yes, that person has a disability under these federal anti-discrimination laws, assuming the person can show that his/her impairment (addiction) substantially limits, or once limited, a major life activity, or that others regard him/her as having such an impairment.

Q: Does the requirement of 15 employees in order for an employer to be covered by the ADA refer to all employees or only full-time employees?

A. It refers to all employees who work 20 or more weeks in a calendar year.

Q: When someone undergoes a workplace drug test, can she just report that she is prescribed methadone without disclosing that she is in treatment for addiction? She could be taking the methadone for pain.

A: The answer depends on whether the drug test is given pre-employment, post-offer, or to an employee. While the Federal anti-discrimination laws permit drug testing at all of these stages (though check State and local laws that may restrict drug testing), they prohibit employers from asking about disabilities during the pre-employment stage.

- Pre-employment: An employer may conduct drug testing to determine whether a job applicant is using drugs, and if so whether the person's use is "legal." (Job applicants and employees who use drugs illegally are not protected from job discrimination based on their illegal use.) So, at the pre-employment stage, the entity conducting drug testing for an employer could require documentation that methadone is being taken legally, but could not ask for or tell the employer the reason at that stage. This is because the reason, e.g., MAT to treat opiate addiction, could reveal disability-related information the employer is not permitted to ask about before a job offer.
- After job offer is made: If the drug test is given after an offer of employment is made, but before the individual begins working, it is legal to ask why methadone is being prescribed, provided that *all* individuals at this stage are asked for the reason(s) they are prescribed medications. Employers may condition job offers on individuals' successfully passing medical exams and answering medical inquiries, but they may not use the information they may obtain about an individual's disability to discriminate against him or her.
- Current employees: If the drug test is given to an employee, it is legal to ask why methadone is being prescribed if there is a "business necessity" for that information.
- Also recall that the ADA has confidentiality provisions that limit the redisclosure of disability-related information an employer may obtain about a job applicant or employee.

Q: Are you saying that chronic alcoholics are protected in the workplace?

A: Yes, people who currently are abusing alcohol are protected by the ADA, assuming they are qualified and able to perform their job and their alcoholism substantially limits or once limited one or more major life activities, or they are regarded as having such an impairment. But remember that it does not violate the ADA to terminate someone for violating workplace rules or for performance problems.

Q: Recently, the medical director at a state operated mental health hospital told me that it was his "prerogative" whether to allow MAT patients into the hospital. Is that true?

A: No. A state-operated mental health hospital is governed by Title II of the ADA, and if it receives federal funding, also by the Rehabilitation Act. It would violate both of these laws to have a flat policy of not admitting patients merely because they participate in MAT. On the other hand, the mental health hospital would need to coordinate with the patient's OTP to arrange for obtaining the methadone (or other medication used in MAT), securing it at the hospital, making sure it did not interact with other prescribed medications, and monitoring the patient's care.

Q: Are nursing boards able to deny nursing licenses to people in MAT?

A: An outright rule that disqualifies nurses in MAT from being licensed would violate the ADA. Applicants for licenses must be considered individually.

Q: How do Federal anti-discrimination laws apply to Commercial Drivers Licenses (CDL) licenses issued by the U.S. Department of Transportation (DOT)? I was told that people currently in treatment with an OTP (opioid treatment program) cannot have a valid CDL license.

A: We answered this question later in the webinar. In short, United States Department of Transportation regulations *do* prohibit the issuance of CDLs for interstate driving to individuals taking prescription methadone or any “narcotic, or other habit forming drug.”

Q: Does the DOT also exclude those who take methadone for pain from obtaining a CDL?

A: The DOT regulations and interpretive guidance do appear to disqualify from CDLs anyone who is prescribed methadone, regardless of the reason. The DOT has issued the following guidance in response to the question, “Is a driver who is taking prescription methadone qualified to drive a CMV in interstate commerce?” “Methadone is a habit-forming narcotic which can produce drug dependence and is not an allowable drug for operators of CMVs [commercial motor vehicles].” As you can see, therefore, the exclusion applies regardless of the reason for the methadone prescription.

Q: Why don’t the DOT regulations prohibiting people in methadone treatment from getting CDLs violate the Federal anti-discrimination laws covered in this webinar?

A: The rules governing conflicts between different federal laws and regulations are complicated, but generally, the more particular law and more recent law governs.

Q: Do recovery homes have to comply with the Fair Housing Act even if they are not licensed?

A: Yes. They have to comply with the Fair Housing Act because they are a “dwelling,” as that term is defined in the law. Their lack of licensure does not change the outcome.

Q: Do the Federal anti-discrimination laws have an exception for faith-based group homes?

A. Faith-based group homes and other religious organizations are not exempt from the provisions of the Fair Housing Act that prohibit disability-based discrimination. Religious organizations may limit the sale, rental or occupancy of dwellings they own or operate for other than a commercial purpose to other people of the same religion, or give preferences to people of the same religion, but they may not discriminate based on other protected categories, including disability.

Q: Can State colleges disallow a student from entering a chemical dependency counseling program while on MAT?

A: We read your question to mean: may a student be denied admission to a course of study to become a counselor because of his/her participation in MAT? The answer is “no.”

Q: If Federal laws prohibit discrimination against people in recovery, then how can people with drug convictions be excluded from food stamps?

A: The Federal law disqualifying people from food stamps because of drug-related convictions excludes people because of the criminal conviction, and not because of the underlying disability. In fact, some individuals who have convictions for possession or sale of drugs may not have an underlying addiction, though many do. Also note that not all states have adopted this ban. To check your state’s law, you can consult the Legal Action Center’s Roadblocks to Reentry report at <http://www.lac.org/roadblocks-to-reentry/>.

Q: The New Jersey Division of Youth and Family Services and Drug Courts always mandate people to stop MAT. Is that legal?

No. It would violate the ADA for any government agency or court to require people under their jurisdiction to end their participation in MAT. Such actions also violate the Rehabilitation Act if the agency (or court) is federally assisted.

Q: Our Drug Court judge wants to know if anyone has looked at whether a Drug Court can exclude people because of participation in MAT?

A: Excluding people from participation in a Drug Court because they participate in MAT violates Federal anti-discrimination laws for the same reason as requiring them to end their participation in MAT (see answer to the prior question).

Q: For those who are coming out of prison and into a re-entry scenario and are on parole, the clinical recommendation is often to transition the person onto Methadone or Suboxone, but parole may say no. Is this legal?

A: No. While this scenario is slightly different from the one discussed in the prior two questions, because it does not involve mandating someone to stop MAT, but rather, preventing them from enrolling in MAT, it violates Federal anti-discrimination laws for the same reasons.

Q: We have clients who end up in county jail. One of our counties allows us to continue to medicate them and another does not, throwing the client into immediate withdrawal. Is there relief for that client?

A: Forcing someone who has been arrested, but not yet convicted (a “detainee”), to end participation in MAT raises serious Constitutional questions, and some courts have found it to be “cruel and unusual punishment” in violation of the Eighth Amendment. In prisons or in jails where individuals have already been convicted, courts have applied less stringent standards for defining “cruel and unusual punishment.” In either setting, however, the failure to provide

medically supervised detoxification raises even stronger Constitutional issues. The American Society of Addiction Medicine issued a policy statement in 2002 on “Access to Appropriate Detoxification Services for Persons Incarcerated in Prisons and Jails” that might prove helpful.

Q: Are not these state DUI laws that make it illegal "per se" to drive with methadone in your system, regardless of whether it is impairing or intoxicating, discriminatory under federal law?

A: We are not aware of any legal challenges that have yet been raised regarding this type of law, but it is possible that a court might find it to violate the ADA.

Q: What can clients involved in child abuse and neglect proceedings do if the court tells them to stop MAT, or they cannot have their children back?

A: As noted in the webinar, it violates Federal anti-discrimination laws for a court to require a parent to stop participating in MAT as a condition of getting their children back. To learn how to people can exercise their rights in such a situation, please read the Legal Action Center’s publication, *Educating Courts, Other Government Agencies & Employers About Methadone*, which has useful suggestions for how to address discrimination. It is available for free on the Center’s website at http://lac.org/doc_library/lac/publications/Educating_about_Methadone.pdf. You may wish to print it and ask your client’s attorney to provide it to the judge.