



The Americans with Disabilities Act and the Opioid Crisis: Combating Discrimination Against People in Treatment or Recovery

The opioid crisis poses an extraordinary challenge to communities throughout our country. The Department of Justice (the Department) has responded with a comprehensive approach prioritizing prevention, enforcement, and treatment. This includes enforcing the Americans with Disabilities Act (ADA), which prohibits discrimination against people in recovery from opioid use disorder (OUD) who are not engaging in illegal drug use, including those who are taking legally-prescribed medication to treat their OUD. This guidance document provides information about how the ADA can protect individuals with OUD from discrimination—an important part of combating the opioid epidemic across American communities. While this document focuses on individuals with OUD, the legal principles discussed also apply to individuals with other types of substance use disorders.

1) What is the ADA?

The ADA is a federal law that gives civil rights protections to individuals with disabilities in many areas of life. The ADA guarantees that people with disabilities have the same opportunities as everyone else to enjoy employment opportunities,¹ participate in state and local government programs,² and purchase goods and services.³ For example, the ADA protects people with disabilities from discrimination by social services agencies; child welfare agencies; courts; prisons and jails; medical facilities, including hospitals, doctors' offices, and skilled nursing facilities; homeless shelters; and schools, colleges, and universities.

2) Does an individual in treatment or recovery from opioid use disorder have a disability under the ADA?

Typically, yes, unless the individual is currently engaged in illegal drug use. *See* Question 5.

The ADA prohibits discrimination on the basis of disability.⁴ The ADA defines disability as (1) a physical or mental impairment that substantially limits one or more major life activities,



U.S. Department of Justice Civil Rights Division

including major bodily functions; (2) a record of such an impairment; or (3) being regarded as having such an impairment.⁵

People with OUD typically have a disability because they have a drug addiction that substantially limits one or more of their major life activities. Drug addiction is considered a physical or mental impairment under the ADA.⁶ Drug addiction occurs when the repeated use of drugs causes clinically significant impairment, such as health problems and or an inability to meet major responsibilities at work, school, or home.⁷ People with OUD may therefore experience a substantial limitation of one or more major life activities, such as caring for oneself, learning, concentrating, thinking, communicating, working, or the operation of major bodily functions, including neurological and brain functions.⁸ The ADA also protects individuals who are in recovery, but who would be limited in a major life activity in the absence of treatment and/or services to support recovery.⁹

3) Does the ADA protect individuals who are taking legally prescribed medication to treat their opioid use disorder?

Yes, if the individual is not engaged in the illegal use of drugs. Under the ADA, an individual's use of prescribed medication, such as that used to treat OUD, is not an "illegal use of drugs" if the individual uses the medication under the supervision of a licensed health care professional, including primary care or other non-specialty providers.¹⁰ This includes medications for opioid use disorder (MOUD) or medication assisted treatment (MAT). MOUD is the use of one of three medications (methadone, buprenorphine, or naltrexone) approved by the Food and Drug Administration (FDA) for treatment of OUD;¹¹ MAT refers to treatment of OUD and certain other substance use disorders by combining counseling and behavioral therapies with the use of FDA-approved medications.¹²

Example A

A skilled nursing facility refuses to admit a patient with OUD because the patient takes doctor-prescribed MOUD, and the facility prohibits any of its patients from taking MOUD. The facility's exclusion of patients based on their OUD would violate the ADA.

Example B

A jail does not allow incoming inmates to continue taking MOUD prescribed before their detention. The jail's blanket policy prohibiting the use of MOUD would violate the ADA.



U.S. Department of Justice
Civil Rights Division

4) Does the ADA protect individuals with opioid use disorder who currently participate in a drug treatment program?

Yes. Individuals whose OUD is a disability and who are participating in a supervised rehabilitation or drug treatment program are protected by the ADA if they are not currently engaging in the illegal use of drugs.¹³ See explanation in Question 5. It is illegal to discriminate against these individuals based on their treatment for OUD.

Example C

A doctor's office has a blanket policy of denying care to patients receiving treatment for OUD. The office would violate the ADA if it excludes individuals based on their OUD.

Example D

A town refuses to allow a treatment center for people with OUD to open after residents complained that they did not want "those kind of people" in their area. The town may violate the ADA if its refusal is because of the residents' hostility towards people with OUD.

5) Does the ADA protect individuals who are currently illegally using opioids?

Generally, no. With limited exceptions, the ADA does not protect individuals engaged in the current illegal use of drugs if an entity takes action against them because of that illegal drug use.¹⁴ "Current illegal use of drugs" means illegal use of drugs that occurred recently enough to justify a reasonable belief that a person's drug use is current or that continuing use is a real and ongoing problem.¹⁵ Illegal use, however, does not include taking a medication, including an opioid or medication used to treat OUD, under the supervision of a licensed health care professional.¹⁶

Example E

A mentoring program requires its volunteers to provide test results showing that they do not engage in the illegal use of drugs. The program dismisses a volunteer who tests positive for opioids for which the volunteer does not have a valid prescription. This does not violate the ADA because the dismissal was based on current illegal drug use.



U.S. Department of Justice Civil Rights Division

In addition, an individual cannot be denied health services, or services provided in connection with drug rehabilitation, on the basis of that individual's current illegal use of drugs, if the individual is otherwise entitled to such services.¹⁷ But a drug rehabilitation or treatment program may deny participation to individuals who engage in illegal use of drugs while they are in the program.¹⁸

Example F

A hospital emergency room routinely turns away people experiencing drug overdoses, but admits all other patients who are experiencing emergency health issues. The hospital would be in violation of the ADA for denying health services to those individuals because of their current illegal drug use, since those individuals would otherwise be entitled to emergency services.

Example G

A drug rehabilitation program asks a participant to leave because that participant routinely breaks a rule prohibiting the use of illegal drugs while in the program. This is not discrimination under the ADA because the program can require participants to abstain from illegal drugs while in the program.

6) Does the ADA protect individuals with a history of past opioid use disorder, who no longer illegally use drugs?

Yes. The ADA protects individuals with a "record of" disability. As explained above in Question 2, OUD typically qualifies as a disability. Therefore, individuals with a "record of" having OUD usually will be protected under the ADA.¹⁹ Individuals would fall into this category if they have a history of, or have been misclassified as having, OUD.²⁰

Example H

A city terminates an employee based on his disclosure that he completed treatment for a previous addiction to prescription opioids. The city may be in violation of the ADA for discriminating against the employee based on his record of OUD.



U.S. Department of Justice
Civil Rights Division

7) Does the ADA provide any legal protections for individuals who are regarded as having an opioid use disorder, whether or not they actually have an opioid use disorder?

Yes. The ADA protects individuals who are “regarded as” having OUD, even if they do not in fact have OUD.²¹

Example I

An employer mistakenly believes that an employee has OUD simply because that employee uses opioids legally prescribed by her physician to treat pain associated with an injury. The ADA prohibits an employer from firing the employee based on this mistaken belief.

8) Does the ADA protect individuals from discrimination based on their association with individuals who have opioid use disorder?

Yes. The ADA protects individuals from discrimination based on their known association or relationship with an individual who has a disability, such as a friend, coworker, or family member. The ADA also protects organizations, such as OUD treatment clinics, from discriminatory enforcement of zoning rules based on the organization’s known association with or relationship to individuals with OUD.²²

9) Can employers have a drug policy or conduct drug testing for opioids?

Yes. Employers may adopt or administer reasonable policies or procedures, including drug testing, designed to ensure that individuals are not engaging in the illegal use of drugs.²³ However, some individuals who test positive for an opioid, which may include MOUD, will be able to show that the medication is being taken as prescribed or administered and a licensed health care professional is supervising its use. These individuals may not be denied, or fired from, a job for this legal use of medication, unless they cannot do the job safely and effectively, or are disqualified under another federal law.²⁴

10) What can I do if I believe I have been discriminated against because of my opioid use disorder or treatment for my opioid use disorder?

Individuals may file a complaint with the Department of Justice if they believe that a public accommodation or a state or local government is discriminating or has discriminated against them because of OUD. Individuals may also bring private lawsuits under the ADA.



U.S. Department of Justice Civil Rights Division

Information about filing an ADA complaint with the Department is available at civilrights.justice.gov. More information about the ADA is available by calling the Department's toll-free ADA information line at 800-514-0301 or 800-514-0383 (TTY), or accessing its ADA website at ada.gov.

Complaints about a state or local government's programs, services, or activities relating to the provision of health care and social services can also be filed with the Department of Health and Human Services Office for Civil Rights (HHS OCR). Information about filing an HHS OCR complaint is available at hhs.gov/civil-rights/filing-a-complaint, by email at OCRMail@hhs.gov, by phone at 1-800-368-1019, or at 1-800-537-7697 (TTY).

Complaints about employment discrimination (called "charges") on the basis of disability can be filed with the Equal Employment Opportunity Commission (EEOC). Information about filing an EEOC charge is available at eoc.gov or 800-669-4000, 800-669-6820 (TTY), or 844-234-5122 (ASL Video Phone). Additional EEOC resources regarding employees and opioid use are available at eoc.gov/laws/guidance/use-codeine-oxycodone-and-other-opioids-information-employees and eoc.gov/laws/guidance/how-health-care-providers-can-help-current-and-former-patients-who-have-used-opioids.

Individuals who believe they have been discriminated against under the ADA and would like to file a complaint should file as soon as possible. For instance, there are specific filing deadlines for a charge of employment discrimination, either 180 days or 300 days from the date of the alleged discrimination, depending on the jurisdiction where the charge is filed.

11) Where can I find treatment for opioid use disorder?

Information about treatment for opioid use disorder is available at hhs.gov/opioids, findtreatment.gov, samhsa.gov/medication-assisted-treatment/practitioner-program-data/treatment-practitioner-locator, and dpt2.samhsa.gov/treatment.

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¹ 42 U.S.C. §§ 12111-12117. The Equal Employment Opportunity Commission (EEOC) and the Department of Justice jointly enforce the ADA's ban on employment discrimination. For more information or to file a complaint of employment discrimination, visit eoc.gov.

² *Id.* §§ 12131-12134.



U.S. Department of Justice
Civil Rights Division

³ *Id.* §§ 12181-12189.

⁴ *Id.* §§ 12112, 12132, 12182.

⁵ *Id.* § 12102(1)-(2).

⁶ 28 C.F.R. §§ 35.108(b)(2), 36.105(b)(2). Regulations implementing Title I of the ADA define the term “physical or mental impairment” as including “any physiological disorder or condition.” 29 C.F.R. § 1630.2(h).

⁷ See Substance Abuse and Mental Health Services Administration, *Mental Health and Substance Use Disorders*, [samhsa.gov/find-help/disorders](https://www.samhsa.gov/find-help/disorders) (last visited Apr. 1, 2022).

⁸ 42 U.S.C. § 12102; 28 C.F.R. §§ 35.108(c)(1) (listing examples of major life activities, which include the operation of major bodily functions), 36.105(c)(1) (same).

⁹ 28 C.F.R. §§ 35.108(d)(1)(viii), 36.105(d)(1)(viii).

¹⁰ 42 U.S.C. § 12210(d); 28 C.F.R. §§ 35.104, 36.104.

¹¹ See Substance Abuse and Mental Health Services Administration, *TIP 63: Medications for Opioid Use Disorder*, store.samhsa.gov/product/TIP-63-Medications-for-Opioid-Use-Disorder-Full-Documents/PEP21-02-01-002 (last visited Apr. 1, 2022); see also Health Resources and Services Administration, *Caring for Women with Opioid Use Disorder: A Toolkit for Organization Leaders and Providers*, [hrsa.gov/sites/default/files/hrsa/Caring-for-Women-with-Opioid-Disorder.pdf](https://www.hrsa.gov/sites/default/files/hrsa/Caring-for-Women-with-Opioid-Disorder.pdf) (last visited Apr. 1, 2022).

¹² See Substance Abuse and Mental Health Services Administration, *Medication-Assisted Treatment (MAT)*, [samhsa.gov/medication-assisted-treatment](https://www.samhsa.gov/medication-assisted-treatment) (last visited Apr. 1, 2022); see also Substance Abuse and Mental Health Services Administration, *MAT Medications, Counseling, and Related Conditions*, [samhsa.gov/medication-assisted-treatment/medications-counseling-related-conditions](https://www.samhsa.gov/medication-assisted-treatment/medications-counseling-related-conditions) (last visited Apr. 1, 2022).

¹³ 42 U.S.C. § 12210(b)(2); 28 C.F.R. §§ 35.131(a)(2)(ii), 36.209(a)(2)(ii).

¹⁴ 42 U.S.C. § 12210(a); 28 C.F.R. §§ 35.131(a)(1), 36.209(a)(1).

¹⁵ 28 C.F.R. §§ 35.104, 36.104.

¹⁶ 42 U.S.C. § 12210(d); 28 C.F.R. §§ 35.104, 36.104.

¹⁷ 42 U.S.C. § 12210(c); 28 C.F.R. §§ 35.131(b)(1), 36.209(b)(1).

¹⁸ 28 C.F.R. §§ 35.131(b)(2), 36.209(b)(2).

¹⁹ 42 U.S.C. § 12102(1)(B); 28 C.F.R. §§ 35.108(a)(1)(ii), 36.105(a)(1)(ii).

²⁰ 42 U.S.C. § 12102(1)(B); 28 C.F.R. §§ 35.108(e), 36.105(e).

²¹ 42 U.S.C. § 12102(1)(C); 28 C.F.R. §§ 35.108(a)(1)(iii), 35.108(f), 36.105(a)(1)(iii), 36.105(f); see also 42 U.S.C. § 12201(h); 28 C.F.R. §§ 35.130(b)(7)(ii), 36.302(g); 29 C.F.R. § 1630.2(o)(4) (noting that individuals who meet the definition of “disability” solely because they are “regarded as” disabled are not entitled to reasonable modifications or reasonable accommodations under the ADA).

²² 42 U.S.C. § 12112(b)(4); 42 U.S.C. § 12182(b)(1)(E); 28 C.F.R. §§ 35.130(g), 36.205; 29 C.F.R. § 1630.8.

²³ 42 U.S.C. §§ 12114(b), 12114(d); 29 C.F.R. §§ 1630.3(c), 1630.16(c); see also 42 U.S.C. § 12210(b); 28 C.F.R. §§ 35.131(c), 36.209(c) (drug testing by Title II and Title III entities).

²⁴ See, e.g., 42 U.S.C. § 12111(3); 29 C.F.R. §§ 1630.2(r), 1630.15(b)(2), 1630.15(e).



U.S. Department of Justice
Civil Rights Division

The Americans with Disabilities Act authorizes the Department of Justice to provide technical assistance to individuals and entities that have rights or responsibilities under the Act. This document provides informal guidance to assist you in understanding the ADA and the Department's regulations.

The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended to provide clarity to the public regarding existing requirements under the law or Department policies.