How the ADA Covers Alcoholism and Drug Addiction

Alcoholism

Alcoholism or alcohol dependence is commonly defined as a disease that causes:

Source: <https://www.nlm.nih.gov/medlineplus/alcoholismandalcoholabuse.html>

* Craving - a strong need to drink
* Loss of control - not being able to stop drinking once you've started
* Physical dependence - withdrawal symptoms
* Tolerance - the need to drink more alcohol to feel the same effect

What Is A Standard Drink? Source: <http://www.niaaa.nih.gov/alcohol-health/overview-alcohol-consumption/what-standard-drink>

Many people are surprised to learn what counts as a drink. The amount of liquid in your glass, can, or bottle does not necessarily match up to how much alcohol is actually in your drink. Different types of beer, wine, or malt liquor can have very different amounts of alcohol content. For example, many light beers have almost as much alcohol as regular beer – about 85% as much. Here’s another way to put it:

Regular beer: 5% alcohol content

Some light beers: 4.2% alcohol content

That’s why it’s important to know how much alcohol your drink contains. In the United States, one "standard" drink contains roughly 14 grams of pure alcohol, which is found in:

12 ounces of regular beer, which is usually about 5% alcohol

5 ounces of wine, which is typically about 12% alcohol

1.5 ounces of distilled spirits, which is about 40% alcohol

How do you know how much alcohol is in your drink?

Even though they come in different sizes, the drinks below are each examples of one standard drink:

The same amount of alcohol is contained in 12 fluid ounces of regular beer, 8 to 9 fluid ounces of malt liquor, 5 fluid ounces of table wine, or a 1.5 fluid ounce shot of 80-proof spirits (“hard liquor” such as whiskey, gin, etc.) The percent of ‘pure’ alcohol varies by beverage.

The percent of “pure” alcohol, expressed here as alcohol by volume (alc/vol), varies by beverage.

Although the “standard” drink amounts are helpful for following health guidelines, they may not reflect customary serving sizes. In addition, while the alcohol concentrations listed are “typical,” there is considerable variability in alcohol content within each type of beverage (e.g., beer, wine, distilled spirits).

Binge Drinking: Source: <http://www.niaaa.nih.gov/alcohol-health/overview-alcohol-consumption/moderate-binge-drinking>

NIAAA defines binge drinking as a pattern of drinking that brings blood alcohol concentration (BAC) levels to 0.08 g/dL. This typically occurs after 4 drinks for women and 5 drinks for men—in about 2 hours.

The Substance Abuse and Mental Health Services Administration (SAMHSA), which conducts the annual National Survey on Drug Use and Health (NSDUH), defines binge drinking as drinking 5 or more alcoholic drinks on the same occasion on at least 1 day in the past 30 days.

Heavy Drinking:

SAMHSA defines heavy drinking as drinking 5 or more drinks on the same occasion on each of 5 or more days in the past 30 days.

Alcohol Facts and Statistics Source: <http://www.niaaa.nih.gov/alcohol-health/overview-alcohol-consumption/alcohol-facts-and-statistics>

Alcohol Use in the United States:

Prevalence of Drinking: In 2013, 86.8 percent of people ages 18 or older reported that they drank alcohol at some point in their lifetime; 70.7 percent reported that they drank in the past year; 56.4 percent reported that they drank in the past month.1

Prevalence of Binge Drinking and Heavy Drinking: In 2013, 24.6 percent of people ages 18 or older reported that they engaged in binge drinking in the past month; 6.8 percent reported that they engaged in heavy drinking in the past month.2

Alcohol Use Disorders (AUDs) in the United States:

Adults (ages 18+): 16.6 million adults ages 18 and older3 (7.0 percent of this age group4) had an AUD in 2013. This includes 10.8 million men3 (9.4 percent of men in this age group4) and 5.8 million women3 (4.7 percent of women in this age group4).

About 1.3 million adults received treatment for an AUD at a specialized facility in 2013 (7.8 percent of adults who needed treatment). This included 904,000 million men (8.0 percent of men in need) and 444,000 women (7.3 percent of women who needed treatment).5

Youth (ages 12–17): In 2013 an estimated 697,000 adolescents ages 12–176 (2.8 percent of this age group7) had an AUD. This number includes 385,000 females6 (3.2 percent of females in this age group7) and 311,000 males6 (2.5 percent of males in this age group7).

An estimated 73,000 adolescents (44,000 males and 29,000 females) received treatment for an alcohol problem in a specialized facility in 2013.8

Alcohol-Related Deaths:

Nearly 88,0009 people (approximately 62,000 men and 26,000 women10) die from alcohol-related causes annually, making it the third leading preventable cause of death in the United States.9

In 2013, alcohol-impaired driving fatalities accounted for 10,076 deaths (30.8 percent of overall driving fatalities).11

Economic Burden:

In 2006, alcohol misuse problems cost the United States $223.5 billion.12

Almost three-quarters of the total cost of alcohol misuse is related to binge drinking.12

Global Burden:

In 2012, 3.3 million deaths, or 5.9 percent of all global deaths (7.6 percent for men and 4.0 percent for women), were attributable to alcohol consumption.13

Alcohol contributes to over 200 diseases and injury-related health conditions, most notably alcohol dependence, liver cirrhosis, cancers, and injuries.14 In 2012, 5.1 percent of the burden of disease and injury worldwide (139 million disability-adjusted life years) was attributable to alcohol consumption.13

Globally, alcohol misuse is the fifth leading risk factor for premature death and disability; among people between the ages of 15 and 49, it is the first.15

Family Consequences:

More than 10 percent of U.S. children live with a parent with alcohol problems, according to a 2012 study.16

Underage Drinking:

Prevalence of Underage Alcohol Use:

Prevalence of Drinking: According to the 2013 National Survey on Drug Use and Health (NSDUH), 35.1 percent of 15-year-olds report that they have had at least 1 drink in their lives.17 About 8.7 million people ages 12–20 (22.7 percent of this age group) reported drinking alcohol in the past month (23 percent of males and 22.5 percent of females).18

Prevalence of Binge Drinking: According to the 2013 NSDUH, approximately 5.4 million people (about 14.2 percent) ages 12–20 were binge drinkers (15.8 percent of males and 12.4 percent of females).18

Prevalence of Heavy Drinking: According to the 2013 NSDUH, approximately 1.4 million people (about 3.7 percent) ages 12–20 were heavy drinkers (4.6 percent of males and 2.7 percent of females).18

Consequences of Underage Alcohol Use:

Research indicates that alcohol use during the teenage years could interfere with normal adolescent brain development and increase the risk of developing an AUD. In addition, underage drinking contributes to a range of acute consequences, including injuries, sexual assaults, and even deaths—including those from car crashes.19

Alcohol and College Students:

Prevalence of Alcohol Use:

Prevalence of Drinking: In 2013, 59.4 percent of full-time college students ages 18–22 drank alcohol in the past month compared with 50.6 percent of other persons of the same age.20

Prevalence of Binge Drinking: In 2013, 39 percent of college students ages 18–22 engaged in binge drinking (5 or more drinks on an occasion) in the past month compared with 33.4 percent of other persons of the same age.21

Prevalence of Heavy Drinking: In 2013, 12.7 percent of college students ages 18–22 engaged in heavy drinking (5 or more drinks on an occasion on 5 or more occasions per month) in the past month compared with 9.3 percent of other persons of the same age.22

Consequences—Researchers estimate that each year:

1,825 college students between the ages of 18 and 24 die from alcohol-related unintentional injuries, including motor-vehicle crashes.23

696,000 students between the ages of 18 and 24 are assaulted by another student who has been drinking.24

97,000 students between the ages of 18 and 24 report experiencing alcohol-related sexual assault or date rape.24

Roughly 20 percent of college students meet the criteria for an AUD.25

About 1 in 4 college students report academic consequences from drinking, including missing class, falling behind in class, doing poorly on exams or papers, and receiving lower grades overall.26

Alcohol and Pregnancy:

The prevalence of Fetal Alcohol Syndrome (FAS) in the United States was estimated by the Institute of Medicine in 1996 to be between 0.5 and 3.0 cases per 1,000.27

More recent reports from specific U.S. sites report the prevalence of FAS to be 2 to 7 cases per 1,000,27 and the prevalence of Fetal Alcohol Spectrum Disorders (FASD) to be as high as 20 to 50 cases per 1,000.28

Alcohol and the Human Body:

In 2013, of the 71,713 total liver disease deaths among individuals aged 12 and older, 46.4 percent involved alcohol. Among males, 48.9 percent of the 46,240 liver disease deaths involved alcohol. Among females, 42.7 percent of the 25,433 liver disease deaths involved alcohol.29

Among all cirrhosis deaths in 2011, 48.0 percent were alcohol related. The proportion of alcohol-related cirrhosis was highest (72.7 percent) among decedents ages 25–34, followed by decedents aged 35–44, at 70.3 percent.30

In 2009, alcohol-related liver disease was the primary cause of almost 1 in 3 liver transplants in the United States.31

Drinking alcohol increases the risk of cancers of the mouth, esophagus, pharynx, larynx, liver, and breast.32

Health Benefits of Moderate Alcohol Consumption:

Moderate alcohol consumption, according to the Dietary Guidelines for Americans 2010, is up to 1 drink per day for women and up to 2 drinks per day for men.33

Moderate alcohol consumption may have beneficial effects on health. These include decreased risk for heart disease and mortality due to heart disease, decreased risk of ischemic stroke (in which the arteries to the brain become narrowed or blocked, resulting in reduced blood flow), and decreased risk of diabetes.34

In most Western countries where chronic diseases such as coronary heart disease (CHD), cancer, stroke, and diabetes are the primary causes of death, results from large epidemiological studies consistently show that alcohol reduces mortality, especially among middle-aged and older men and women—an association which is likely due to the protective effects of moderate alcohol consumption on CHD, diabetes, and ischemic stroke.35

It is estimated that 26,000 deaths were averted in 2005 because of reductions in ischemic heart disease, ischemic stroke, and diabetes from the benefits attributed to moderate alcohol consumption.36

Expanding our understanding of the relationship between moderate alcohol consumption and potential health benefits remains a challenge, and although there are positive effects, alcohol may not benefit everyone who drinks moderately.

Drug Addiction

Drug Addiction is: Source;[http://medical-dictionary.thefreedictionary.com/drug+addiction](http://medical-dictionary.thefreedictionary.com/drug%2Baddiction)

1. the state of being given up to some habit or compulsion.

2. strong physiological and psychological dependence on a drug or other agent; see alcoholism and drug dependence.

3. drug addiction a state of heavy dependence on a drug; sometimes defined as physical dependence but usually also including emotional dependence, i.e., compulsive or pathological drug use. It is often used synonymously with drug dependence.

Drug Abuse Symptoms Sourcr: <http://luxury.rehabs.com/drug-abuse/>

Depending upon your drug of choice, the symptoms that signify an addiction that requires treatment will vary. Stimulant drugs, opiates, hallucinogens – they all have different telltale signs that signify usage.

In general, however, there are a number of signs that drug abuse or alcohol abuse is a serious problem. Notice more than a few of the following things happening to someone you care about – or happening in your own life – and it’s likely that drug abuse is an issue that you need to address through treatment.

* Isolating from family and friends who don’t abuse drugs
* Spending time with new friends, or friends who get high or drink
* Never having money and always asking to borrow money, even for small items
* Showing up late to work or not showing up at all
* Losing a job
* Doing little to find a job if out of work
* Paying no attention to basic hygiene
* Often sleeping or claiming to be ill
* Extremely private about possessions, including their bag, room or car
* Lying about using or drinking
* Sneaking away to get high or drunk

When someone is using drugs or alcohol, they aren’t very good at covering up the signs or hiding the evidence. You may find bottles of alcohol hidden in odd places or drug paraphernalia among your loved one’s belongings. His personality may be different as well – far more agitated or irritable than he used to be and more likely to take offense at your remarks, or blow off commitments or family events.

Drug Abuse Facts

Use and abuse of illicit drugs like heroin and cocaine cost the American public about $181 billion every year. Annual alcohol costs come to about $235 billion.

The untold cost of drug and alcohol abuse and addiction in the United States is not financial. It comes in the form of broken families, destroyed careers, death due to negligence or accident, domestic violence and physical abuse, and child abuse.

More than 30 million Americans over the age of 12 said that they drove a car after drinking alcohol at least one time in 2009.

Drug abuse and addiction changes your brain chemistry. The longer you use your drug of choice, the more damage is done – and the harder it is to go back to “normal” during drug rehab.

Drug abuse and addiction is also a compulsive disorder. That is, it is characterized by cravings that are difficult to control without treatment in a private inpatient rehab center.

Addiction is a chronic disease. Like diabetes, heart disease and other chronic medical illnesses, once you’ve got it, you’re stuck with it. Even when “in remission” and not actively using, you need to stick to your treatment plan and stay engaged with your recovery.

The best way to treat drug and alcohol dependence is to undergo a comprehensive rehabilitation program that is tailored to meet your specific needs. If you experience depression, your rehab program should treat that as well. If you suffered a childhood trauma, that should be addressed during drug rehab.

The quickest and most effective way to locate the best drug rehab – not just the closest or the most familiar – is to contact us at the phone number listed above. Call now to speak with a counselor who can help you take that first step toward the life of abstinence that you deserve.

Drug Abuse Statistics

A number of different government agencies take annual surveys to monitor the ups and downs of drug and alcohol abuse and addiction in the United States. Some findings include:

The National Survey on Drug Use and Health (NSDUH) reports that cocaine use has declined among Americans over the age of 12 – from about 2.3 million people in 2003 to about 1.6 million people in 2009.

The NSDUH also estimated that about 30.2 million people or 12 percent of the population over 12 drove while intoxicated at least once in 2009.

The Substance Abuse and Mental Health Services Administration (SAMHSA) reported that 23.5 million Americans sought drug and alcohol rehabilitation in 2009 – more than nine percent of the population over the age of 12. It is estimated that more than 41 percent of treatment admissions were for alcohol abuse, 20 percent of admissions were for heroin addiction treatment, and 17 percent were for the treatment of marijuana abuse.

Drug-Related Emergency Room Visits

The Drug Abuse Warning Network (DAWN) reports on the number of drug-related emergency room visits that happen in different areas of the country each year. According to them:

More than 4.6 million emergency room visits were related in some way to drugs in the United States in 2009.

About half of those visits were caused by reactions to medications that were taken according to a doctor’s prescription, and 45 percent were related to the abuse of illicit substances – or 2.1 million emergency room visits.

Of the 2.1 million ER visits caused by drug abuse, more than 27 percent were caused by the nonmedical abuse of prescription drugs, OTC medications, and supplements; more than 21 percent were caused by illicit drugs; and more than 14 percent involved alcohol in combination with other illicit substances.

Perhaps the most disturbing statistic: ER visits caused by prescription drugs increased more than 98 percent between 2004 and 2009.

Are you ready to find a drug rehab that can help you or someone you love avoid becoming a statistic? Call now to speak to an addiction treatment counselor.

Drug Addicts Fit a Stereotype source: <http://alcoholrehab.com/drug-addiction/common-myths-about-drug-addiction/>

The stereotypical drug addict is somebody who:

\* Spends a great deal of time in alleyways in the bad side of town.

\* Have legal problems and a criminal history.

\* Steal from family and friends.

\* An individual who wears dirty unkempt clothing and doesn’t invest much time into personal hygiene.

\* They move from low paid job to low paid job or are more likely unemployable.

\* Estranged from their family.

\* Sad people who have nothing good in their life.

\* Drug users are stereotypically under 40 years of age.

\* Junkies have no ambition in life.

\* They are usually homeless and live in derelict buildings with other junkies.

\* They are unable to maintain a healthy romantic relationship.

\* They are usually looked upon as a lowlife in their community.

The reality of drug users can differ greatly from the stereotype. Many substance abusers have a well maintained addiction. These are often individuals who:

\* Never visit back alleyways in the seedier parts of town. The person supplying them with drugs may even be wearing a suit and working in an office.

\* Have never had any legal problems or be on the police radar.

\* Most addicts have never needed to steal money from family and friends.

\* They may wear expensive clothing and be perfectly groomed.

\* They may have a successful career and by highly respected by their peers.

\* Many addicts are loved and cherished by their family and friends.

\* They can appear at least outwardly happy and be extremely positive about the future.

\* Drug addicts can be of any age. There are an increasing number of elderly people who are abusing drugs – it has even been referred to as a hidden epidemic.

\* These individuals can be highly ambitions and driven people.

\* They may live in a big expensive house.

\* They can have a loving partner

\* Many addicts are highly respected in their community. Most of the people who know them would not even guess that they had even tried recreational drugs.

The stereotypical image of the drug addict can have negative implications. It makes it easier for people to hide their substance abuse problems. They can kid themselves that so long as they do not fit the stereotype they do not really have a problem.

How the ADA covers Alcoholism and Drug Addiction Source: <http://www.usccr.gov/pubs/ada/ch4.htm>

It has been reported that 10 percent to 25 percent of the American population is “sometimes on the job under the influence of alcohol or some illicit drug.”[1] The social and economic costs of substance abuse in America are staggering. In a report issued in 1998 by the National Institute on Alcohol Abuse and Alcoholism and the National Institute on Drug Abuse, it is estimated that the cost of alcohol and drug abuse for 1995 was $276.4 billion, of which $166.5 billion was for alcohol abuse and $109.8 billion was for drug abuse.[2]

Title I of the Americans with Disabilities Act[3] specifically permits employers to ensure that the workplace is free from the illegal use of drugs and the use of alcohol, and to comply with other federal laws and regulations regarding drug and alcohol use. At the same time, the ADA provides limited protection from discrimination for recovering drug abusers and for alcoholics.[4]

The following is an overview of the current legal obligations for employers and employees:

An individual who is currently engaging in the illegal use of drugs is not an “individual with a disability” when the employer acts on the basis of such use.

An employer may not discriminate against a person who has a history of drug addiction but who is not currently using drugs and who has been rehabilitated.

An employer may prohibit the illegal use of drugs and the use of alcohol at the workplace.

It is not a violation of the ADA for an employer to give tests for the illegal use of drugs.

An employer may discharge or deny employment to persons who currently engage in the illegal use of drugs.

Employees who use drugs or alcohol may be required to meet the same standards of performance and conduct that are set for other employees.

Employees may be required to follow the Drug-Free Workplace Act of 1988 and rules set by federal agencies pertaining to drug and alcohol use in the workplace.[5]

WHEN ARE DRUG USERS COVERED UNDER THE ADA?

The ADA provides that any employee or job applicant who is “currently engaging” in the illegal use of drugs is not a “qualified individual with a disability.”[6] Therefore, an employee who illegally uses drugs—whether the employee is a casual user or an addict—is not protected by the ADA if the employer acts on the basis of the illegal drug use.[7] As a result, an employer does not violate the ADA by uniformly enforcing its rules prohibiting employees from illegally using drugs.[8] However, “qualified individuals” under the ADA include those individuals:

who have been successfully rehabilitated and who are no longer engaged in the illegal use of drugs;[9]

who are currently participating in a rehabilitation program and are no longer engaging in the illegal use of drugs;[10] and

who are regarded, erroneously, as illegally using drugs.[11]

A former drug addict may be protected under the ADA because the addiction may be considered a substantially limiting impairment.[12] However, according to the EEOC Technical Assistance Manual on the ADA, a former casual drug user is not protected:

[A] person who casually used drugs illegally in the past, but did not become addicted is not an individual with a disability based on the past drug use. In order for a person to be “substantially limited” because of drug use, s/he must be addicted to the drug.[13]

What Is a “Current” Drug User?

The definition of “current” is critical because the ADA only excludes someone from protection when that person is a “current” user of illegal drugs. In her testimony before the Commission, Nancy Delogu, counsel to the Institute for a Drug-Free Workplace,[14] stated, “There is insufficient law on the issue right now and it is causing great difficulty for employers to determine exactly when they may take discipline against an employee.”[15]

Mark Rothstein, professor of law and director of the Health, Law and Policy Institute at the University of Houston, concurred with Ms. Delogu, testifying before the Commission that the EEOC should “engage in some sort of interpretive statement” and, after consulting with experts in the rehabilitation community,

could offer guidance that would be very helpful to employers in this area such as stating a particular length of time that an individual must be stable and making progress or require certification of an individual who had a substance abuse problem from some professional that they were making good progress before they would be covered [by the ADA], because . . . employers are having a difficult time making a determination. The courts have been reluctant to set out specific time periods, and this is an area that has caused a great deal of concern.[16]

The EEOC has defined “current” to mean that the illegal drug use occurred “recently enough” to justify the employer’s reasonable belief that drug use is an ongoing problem.[17] The EEOC Technical Assistance Manual on the ADA provides the following guidance:

If an individual tests positive on a drug test, he or she will be considered a current drug user, so long as the test is accurate.

Current drug use is the illegal use of drugs that has occurred recently enough to justify an employer’s reasonable belief that involvement with drugs is an ongoing problem.

“Current” is not limited to the day of use, or recent weeks or days, but is determined on a case-by-case basis.[18]

The Circuit Courts of Appeals have held that a person can still be considered a current user even if he or she has not used drugs for a number of weeks or even months. For example, in Zenor v. El Paso Healthcare Systems, Ltd.,[19] the court held that the employee, a pharmacist, was a “current” user because he had used cocaine five weeks prior to his notification that he was going to be discharged. In Salley v. Circuit City Stores, Inc.,[20] the court noted that it knew of “no case in which a three-week period of abstinence has been considered long enough to take an employee out of the status of ‘current’ user.”[21]

In Shafer v. Preston Memorial Hospital Corp.,[22] the court considered the ADA claim of a nurse who was stealing medication to which she had become addicted.[23] While the hospital investigated the matter, the nurse was put in drug rehabilitation.[24] The day after she finished her inpatient drug rehabilitation, she was notified that she had been terminated for “gross misconduct involving the diversion of controlled substances.”[25]

In concluding that the plaintiff was still a “current” illegal drug user, the court noted that “the ordinary or natural meaning of the phrase ‘currently using drugs’ does not require that a drug user have a heroin syringe in his arm or a marijuana bong to his mouth at the exact moment contemplated.”[26] Rather, according to the court, someone is a “current” user if he or she illegally used drugs “in a periodic fashion during the weeks and months prior to discharge.”[27]

Can Enrolling in a Rehabilitation Program Provide ADA Protection?

A question sometimes arises as to whether a drug addicted employee who breaks the company rules can, before being disciplined, enroll in a supervised drug rehabilitation program, and then claim ADA protection as a former drug addict who no longer illegally uses drugs. In her testimony before the Commission, Nancy Delogu stated:

It is causing great difficulty for employers to determine exactly when they may take discipline against an employee who may have had a disciplinary problem, tests positive or admits to a substance abuse problem, comes into rehabilitation for maybe 30 days. The employer waits until the employee returns to the work force and then says, “All right, now we’re going to talk about the problems we have,” and the employee says, “Hey, I’m disabled, I’m now covered by the ADA. . . .” This provision actually serves as something of a disincentive to employers to offer rehabilitation and other services to employees before addressing any substantive performance problems.[28]

The EEOC Technical Assistance Manual on the ADA states that such claims made by an applicant or employee will not be successful:

An applicant or employee who tests positive for an illegal drug cannot immediately enter a drug rehabilitation program and seek to avoid the possibility of discipline or termination by claiming s/he is now in rehabilitation and is no longer using drugs illegally. A person who tests positive for illegal use of drugs is not entitled to the protection that may be available to former users who have been or are in rehabilitation.[29]

Notwithstanding the EEOC’s clear language, employees still attempt to use the argument in courts. When they do, the employer will argue—and usually with success—that the employee is a “current” user despite his or her recent admission into a drug rehabilitation program.[30]

For example, in Collings v. Longview Fibre Co.,[31] the employer fired several employees for using illegal drugs at the facility.[32] In their ADA lawsuit, seven of the eight plaintiffs said they had either completed drug rehabilitation programs or were in the process of rehabilitation at the time they were fired, so they were not “current” users.[33] Some of the plaintiffs even took drug tests shortly after they were discharged to prove they were not currently using illegal drugs.[34]

The court said “current” use was not limited to the use of drugs “on the day of, or within a matter of days or weeks before” the employment action in question.[35] Rather, said the court, the provision is intended to apply “to the illegal use of drugs that has occurred recently enough to indicate that the individual is actively engaged in such conduct.”[36] The plaintiffs were held to be “current” users and, despite the fact that they had entered or had completed a drug rehabilitation program, were not protected by the ADA.[37]

Reasonable Accommodation for Drug Addicts

The duty to provide reasonable accommodations to qualified individuals with disabilities is considered one of the most important statutory requirements of the ADA.[38] If a recovering drug addict is not currently illegally using drugs, then he or she may be entitled to reasonable accommodation. This would generally involve a modified work schedule so the employee could attend Narcotics Anonymous meetings or a leave of absence so the employee could seek treatment.[39]

WHEN ARE ALCOHOL USERS COVERED UNDER THE ADA?

Individuals who abuse alcohol may be considered disabled under the ADA if the person is an alcoholic or a recovering alcoholic.[40] Courts have usually held that alcoholism is a covered disability. For example, in Williams v. Widnall,[41] the court flatly stated, without discussion, that alcoholism “is a covered disability.”[42]

Some courts have questioned whether alcoholism should automatically be designated as a covered disability. For example, in Burch v. Coca-Cola,[43] the court held that alcoholism is not a per se disability and found that the plaintiff’s alcoholism was not a covered disability because it did not substantially limit any of his major life activities.[44] Similarly, in Wallin v. Minnesota Department of Corrections,[45] the court suggested that it would analyze alcoholism on a case-by-case basis and noted that the plaintiff had not presented evidence “that his alcoholism impaired a major life activity.”[46] Moreover, both Burch and Wallin are consistent with the United States Supreme Court’s ruling in Sutton v. United Airlines, Inc.,[47] which stated clearly that an “individualized inquiry” will be conducted to determine whether an impairment “substantially limits” a major life activity. As the Court explained in Sutton:

A “disability” exists only where an impairment “substantially limits” a major life activity, not where it “might,” “could,” or “would” be substantially limiting if corrective measures were not taken. Second, because subsection (A) [of 42 U.S.C. § 12102(2)] requires that disabilities be evaluated “with respect to an individual” and be determined based on whether an impairment substantially limits the individual’s “major life activities,” the question whether a person has a disability under the ADA is an individualized inquiry.[48]

Even though courts may determine that alcoholism is a covered disability, the law makes it clear that employers can enforce rules concerning alcohol in the workplace. The ADA provides that employers may:

prohibit the use of alcohol in the workplace;[49]

require that employees not be under the influence of alcohol in the workplace;[50] and

hold an employee with alcoholism to the same employment standards to which the employer holds other employees even if the unsatisfactory performance or behavior is related to the alcoholism.[51]

The EEOC Technical Assistance Manual giving further guidance on the ADA provides that employers are free to “discipline, discharge or deny employment to an alcoholic whose use of alcohol adversely affects job performance or conduct to the extent that s/he is not ‘qualified.’ ”[52] The manual elaborates with the following example:

If an individual who has alcoholism often is late to work, or is unable to perform the responsibilities of his/her job, an employer can take disciplinary action on the basis of the poor job performance and conduct. However, an employer may not discipline an alcoholic employee more severely than it does other employees for the same performance or conduct.[53]

For example, if an alcoholic employee and a non-alcoholic employee are caught having a beer on the loading dock, the employer cannot fire the alcoholic employee while giving the other employee only a written warning.[54] In Flynn v. Raytheon Co.,[55] the court dealt with this precise issue. It held that even though an employer can enforce its rules against intoxication on the job, it could not selectively enforce its rules in a way that treats alcoholics more harshly.[56] In short, whatever policies the employer enacts must be uniformly applied.[57]

Reasonable Accommodation for Alcoholics

The duty to provide reasonable accommodations to qualified individuals with disabilities is considered one of the most important statutory requirements of the ADA.[58] Reasonable accommodation for an alcoholic would generally involve a modified work schedule[59] so the employee could attend Alcoholics Anonymous meetings, or a leave of absence[60] so the employee could seek treatment. In Schmidt v. Safeway, Inc.,[61] for example, the court held that the employer must provide a leave of absence so the employee could obtain medical treatment for alcoholism.[62]

The ADA does not require an employer to provide an alcohol rehabilitation program or to offer rehabilitation in lieu of disciplining an employee for alcohol-related misconduct or performance problems. In Senate proceedings, Senator Daniel Coats (R-IN) asked Senator Tom Harkin (D-IA), the ADA’s chief sponsor, “Is the employer under a legal obligation under the act to provide rehabilitation for an employee who is using . . . alcohol?” In response, Senator Harkin stated, “No, there is no such legal obligation.”[63] The Senate report echoes Senator Harkin’s response that reasonable accommodation “does not affirmatively require that a covered entity must provide a rehabilitation program or an opportunity for rehabilitation . . . for any current employee who is [an] alcoholic against whom employment-related actions are taken” for performance or conduct reasons.[64]

The EEOC has held that “federal employers are no longer required to provide the reasonable accommodation of ‘firm choice’ under Section 501 of the Rehabilitation Act.”[65] “Firm choice” generally entails a warning to employees with alcohol-related employment problems that they will be disciplined if they do not receive alcohol treatment. The EEOC’s rationale is that the Rehabilitation Act was amended in 1992 to apply ADA standards, and that the ADA does not require an employer to excuse misconduct for poor performance, even if it is related to alcoholism. In EEOC’s “Enforcement Guidance on Reasonable Accommodation and Undue Hardship” statement, the EEOC reiterated that an employer “has no obligation to provide ‘firm choice’ or a ‘last chance agreement’ as a reasonable accommodation.”[66]

Moreover, an employer is generally not required to provide leave to an alcoholic employee if the treatment would appear to be futile. For example, in Schmidt v. Safeway, Inc.,[67] the court said an employer would not be required “to provide repeated leaves of absence (or perhaps even a single leave of absence) for an alcoholic employee with a poor prognosis for recovery.”[68] And in Fuller v. Frank,[69] the court held that the employer was not required to give an alcoholic employee another leave of absence when alcohol treatment had repeatedly failed in the past.[70]

Finally, an employer generally has no duty to provide an accommodation to an employee who has not asked for an accommodation and who denies having a disability. In Larson v. Koch Refining Co.,[71] the court dealt with this precise issue and held that the employer had no obligation to provide accommodation to an employee with alcoholism when the employee did not ask for an accommodation, and in fact expressly denied having an alcohol problem.[72]

Blaming Misconduct on Alcoholism

Courts routinely hold that employees cannot blame misconduct on alcoholism. For example, in Renaud v. Wyoming Department of Family Services,[73] the court noted that even if alcoholism is assumed to be a disability, the ADA distinguishes between alcoholism and alcoholism-related misconduct.[74] The court determined that the employer could lawfully terminate the employee (a school superintendent) for coming to work drunk, even though he claimed the conduct resulted from his alcoholism.[75]

In Labrucherie v. Regents of the University of California,[76] the court stated it was not discriminatory to fire an employee because he was incarcerated after his third arrest for drunk driving.[77] The court noted that “a termination based on misconduct stemming from a disability, rather than the disability itself, is valid.”[78]

Likewise, in Maddox v. University of Tennessee,[79] the university fired an assistant football coach after his third arrest for drunk driving.[80] During the arrest, the assistant coach was combative and would not take a Breathalyzer test.[81] The employee claimed that he was discriminated against based on his alcoholism because his drunk driving was a result of the alcoholism.[82] The court agreed with the university that the misconduct could be separated from the alcoholism and that the assistant coach was properly terminated due to the misconduct.[83]

It is clear that an employer does not, as a reasonable accommodation, have to forgive misconduct because the misconduct resulted from alcoholism. In Flynn v. Raytheon Co.,[84] the lower court noted that an employee who broke the company’s policy prohibiting being under the influence of alcohol in the workplace cannot “belatedly avail himself of the reasonable accommodation provisions” of the ADA to escape discipline for his misconduct.[85] The First Circuit also noted that the ADA “does not require an employer to rehire a former employee who was lawfully discharged for disability-related failures to meet its legitimate job requirements.”[86]

DIRECT THREAT POSED BY SUBSTANCE ABUSE

The defense of “direct threat” is one that is raised frequently by employers in dealing with issues of substance abuse. The ADA defines direct threat as “a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation.”[87] The ADA permits employers to require, as a job qualification, that an individual not “pose a direct threat to the health or safety of other individuals in the workplace.”[88] Moreover, an employer may institute such a requirement even if an employer’s reliance on such a qualification might “screen out or tend to screen out or otherwise deny a job or benefit to an individual with a disability.”[89]

The determination that an individual with a disability poses a direct threat shall be based on an individualized assessment of the individual’s present ability to safely perform the essential functions of the job.[90] In determining whether an individual would pose a direct threat, the factors to be considered include:

the duration of the risk;

the nature and severity of the potential harm;

the likelihood that the potential harm will occur; and

the imminence of the potential harm.[91]

Evidence used in making the determination may include information from the individual, including the individual’s experience in previous similar situations, and the opinions of doctors, rehabilitation counselors, or physical therapists who have expertise in the specific disability or who have direct knowledge of the individual.[92]

Moreover, the EEOC has emphasized, in its Interpretive Guidance on Title I of the ADA, that an employer may not deny employment to an individual with a disability “merely because of a slightly increased risk. The risk can only be considered when it poses a significant risk, i.e., high probability of substantial harm; a speculative or remote risk is insufficient.”[93]

EEOC v. Exxon Corporation

In EEOC v. Exxon Corporation,[94] the courts were forced to analyze the ADA’s “direct threat”[95] defense and how it interacts with the “business necessity”[96] defense. With respect to substance abuse and the ADA, courts have generally recognized an employer’s prerogative to formulate and rely upon safety-based job qualifications, even though they may screen out individuals with disabilities.

In Exxon, the EEOC brought suit against Exxon on behalf of several employees,[97] alleging that the company’s blanket policy of prohibiting individuals who have ever been treated for drug or alcohol abuse from working in safety-sensitive “designated positions”[98] (approximately 10 percent of Exxon’s positions) violated the ADA.[99] The EEOC argued that the company’s policy was invalid on its face because it did not provide, as mandated by ADA regulations, for an “individualized assessment” of whether former drug abusers were qualified to work in any of the designated safety-sensitive positions.[100]

The company countered by claiming that the ADA does not require an individualized assessment of an employee’s risk of relapse where such an assessment would be impractical or impossible.[101] The company argued that the risk of relapse for rehabilitated substance abusers is too great to permit them to work in the designated safety-sensitive positions, and that the inability to predict a relapse makes individualized assessments futile.[102]

The U.S. District Court found that the ADA permits an exception to the individualized assessment ordinarily required under the law.[103] The court relied on the ADA’s emphasis on protecting employers from the risks posed by recently rehabilitated employees, and on other employment discrimination statutes that permit blanket exclusions where safety is an issue and the employer has reason to believe that all of the disqualified employees would be unable to perform safely.[104]

In its appeal, the EEOC relied on its Interpretive Guidance to argue that employers must meet the direct threat defense:

With regard to safety sensitive requirements that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities, an employer must demonstrate that the requirement, as applied to the individual, satisfies the “direct threat” standard . . . in order to show that the requirement is job-related and consistent with a business necessity.[105]

The Fifth Circuit Court of Appeals examined the text of the ADA and held while “direct threat” focuses on the individual employee and examines the specific risk posed by the employee’s disability, “business necessity” addresses whether the qualification standard can be justified as an across-the-board requirement.[106] The court determined that while Exxon’s “blanket” across-the-board policy might exclude individuals with disabilities without an individualized analysis as to whether they could perform the essential functions of the position, this exclusion was appropriate if the employer could demonstrate that it is justified by business necessity.[107]

The Exxon case generated significant debate during the Commission’s ADA hearing. Nancy Delogu, counsel to the Institute for a Drug-Free Workplace, said it was important to resolve the issue. She testified:

Alcoholism and substance abuse are chronic conditions for which the risk of relapse cannot be well . . . predicted. And for certain very, very highly safety-sensitive positions, those which have no . . . direct supervision and for which a lapse in judgment could lead to a catastrophic error, employers wish to be able to exclude those employees from those positions. Whether they’re required to transfer them to another position would certainly be something open to a policy debate, but currently this is quite a concern.[108]

Kenneth Collins, formerly the manager of the Employee Assistance Program at Chevron Corporation and currently vice president for Value Options, the nation’s second largest provider of behavioral health care services, testified that the Chevron Corporation conducted a study on accident rates of its workers.[109] The study concluded that workers who had completed Employee Assistance Program-monitored substance abuse rehabilitation had no more on-the-job or off-the-job accidents than did the “regular” Chevron population.[110] Mr. Collins testified:

It certainly is my position based on my experience and the research done within Chevron and at other similar oil companies who have tightly structured employee assistance programs that, in fact, you can return individuals to highly safety-sensitive positions and not expose the company to increased risks of accidents or errors in judgment. But that is premised on having a rigorous follow-up program [which involves weekly follow-up testing].[111]

The Exxon case suggests that an employer should carefully consider the context in which medical guidelines will be used; i.e., will medical guidelines be used as a basis for formulating job qualifications for safety-based reasons, or will they be used to assess, during a medical examination, whether an individual poses a direct threat. The ruling in Exxon suggests that an employer’s reliance on medical guidelines may be more defensible when they are used to formulate a broad-based qualification than to assess an individual case.

Some experts suggest that partly because of the publicity surrounding notorious cases like Exxon, companies can become too quick to designate a position as “safety sensitive.” Mark Rothstein, professor of law and director of the Health, Law and Policy Institute at the University of Houston, testified before the Commission that some employers have indeed been overly inclusive in the process of determining which positions are safety sensitive:

I think some employers have an overly broad view of what a safety-sensitive position is and have . . . declared many jobs permanently unavailable to individuals who have ever had any sort of substance abuse problem, no matter how many years in the past. And I think that these policies are not substantiated by the scientific evidence and I think are directly counter to the purposes of the ADA.[112]

Mr. Rothstein testified that while he thought a blanket policy was “understandable” in the Exxon case, he thought it “ill-advised” to adopt a “basically irrebuttable presumption” that anyone who has ever had a substance abuse problem should be barred for his or her lifetime from engaging in an activity that the employer deems to be safety sensitive.[113] To illustrate his point, Mr. Rothstein referred to the case of Knox County Education Association v. Knox County Board of Education.[114]

In Knox County, the Sixth Circuit upheld the drug testing of school personnel, including principals, teachers, aides, secretaries, and bus drivers, on the ground that because these individuals play a unique role in the lives of children, all the positions were deemed to be safety sensitive, including the people who worked in the office.[115] Mr. Rothstein testified:

It seems to me that if you broaden the concept of safety sensitive as far as that court and applied it in the workplace, now you’re basically saying that anyone who ever had a minor substance abuse problem in college 25 or 30 years ago, they’re now barred from who knows how many jobs. That strikes me as not being based on any good facts or any good policy.[116]

Ellen Weber, director of the national office of the Legal Action Center, a law and policy office that specializes in alcohol, drug, and AIDS issues, concurred with Mr. Rothstein. She testified before the Commission, “We . . . agree to a great extent with . . . what Mr. Rothstein has said with regard to the issues of employers overly expanding the list of safety-sensitive jobs to which people are rejected from blanketly.”[117]

PRE-EMPLOYMENT INQUIRIES ABOUT DRUG AND ALCOHOL USE

An employer may make certain pre-employment, pre-offer inquiries regarding use of alcohol or the illegal use of drugs.[118] An employer may ask whether an applicant drinks alcohol or whether he or she is currently using drugs illegally.[119] However, an employer may not ask whether an applicant is a drug abuser or alcoholic, or inquire whether he or she has ever been in a drug or alcohol rehabilitation program.[120] Indeed, the EEOC has provided extensive guidance of what can and cannot be asked through its Enforcement Guidance titled “Pre-employment Disability-Related Questions and Medical Examinations.”[121]

After a conditional offer of employment, an employer may ask any question concerning past or present drug or alcohol use as long as it does so for all entering employees in the same job category.[122] The employer may not, however, use such information to exclude an individual with a disability, on the basis of a disability, unless it can show that the reason for exclusion is job related and consistent with business necessity, and that legitimate job criteria cannot be met with a reasonable accommodation.[123]

DRUG TESTING

An employer may conduct tests to detect illegal use of drugs.[124] The ADA does not prohibit, require, or encourage drug tests. Drug tests are not considered medical examinations, and an applicant can be required to take a drug test before a conditional offer of employment has been made.[125] An employee also can be required to take a drug test, whether or not such a test is job related and necessary for the business.[126]

An employer may refuse to hire an applicant or may discharge or discipline an employee based upon a test result that indicates the illegal use of drugs. The employer may take these actions even if an applicant or employee claims that he or she recently stopped illegally using drugs.[127]

Tests for illegal use of drugs also may reveal the presence of lawfully used drugs, i.e., prescription medications. If a person is excluded from a job because the employer erroneously “regarded” him or her to be a drug abuser, currently using drugs illegally, and a drug test revealed the presence of a lawfully prescribed drug, the employer would be liable under the ADA.[128] There was testimony at the Commission’s ADA hearing to suggest that this problem should be examined more closely to see if it is leading to costly and unnecessary litigation in the workplace. Nancy Delogu told the Commission:

With drug abuse in the workplace and the number of individuals who are subject to drug testing, anyone who ever has a positive drug test, theoretically, can claim to be perceived as disabled by his or her employer or would-be employer. As a result, many cases have been brought, and many which are quite frivolous based on a positive drug test. The employer is going to do whatever they are going to do and then the employee says, “Well you saw me as disabled and I’m going to sue.” Unfortunately, that’s an issue of fact that requires usually lengthy discovery and litigation costs before that can be resolved.[129]

To avoid such potential liability, the employer would have to determine whether the individual was using a legally prescribed drug. An employer may not ask what prescription drugs an individual is taking before making a conditional job offer; however, an employer may validate a positive test result by asking about an applicant’s lawful use of drugs or for other possible explanations for the positive test result. Alternatively, the EEOC Technical Assistance Manual on the ADA suggests:

O]ne way to avoid liability is to conduct drug tests after making an offer, even though such tests may be given at anytime under the ADA. Since applicants who test positive for illegal drugs are not covered by the ADA, an employer can withdraw an offer of employment on the basis of illegal drug use.[130]

Mark Rothstein, professor of law and director of the Health, Law and Policy Institute at the University of Houston, endorses this EEOC recommendation. He testified at the Commission’s ADA hearing:

This is a problem that can be avoided very simply by employers who defer drug testing until the post-offer stage, that is the pre-placement stage when there are no restrictions on inquiries regarding medical conditions or substances that could cause cross-reactivity. The reason that many employers don’t want to . . . defer the testing until the post-offer stage is they think it’s cheaper to screen out workers or potential workers on the basis of a positive drug test than it is to review their résumés and applications and references and to actually look at the individual. And that may well be true, but I think that’s a rather unconvincing reason to me, at least, for subjecting individuals to this violation of their privacy that Congress otherwise said was impermissible.[131]

 If the results of a drug test indicate the presence of a lawfully prescribed drug, such information must be kept confidential, in the same way as any medical record. If the results reveal information about a disability in addition to information about drug use, the disability-related information is to be treated as a confidential medical record.[132]

OTHER LAWS AND REGULATIONS CONCERNING DRUGS AND ALCOHOL

The ADA does not interfere with an employer’s ability to comply with other federal laws and regulations concerning the use of drugs and alcohol, including the Drug-Free Workplace Act of 1988; regulations applicable to particular types of employment, such as law enforcement positions; regulations of the Department of Transportation for airline employees, interstate motor carrier drivers, and railroad engineers; and regulations for safety-sensitive positions established by the Department of Defense and the Nuclear Regulatory Commission. Employers may continue to require that their applicants and employees comply with such federal laws and regulations.[133]

[1] See Federico E. Garcia, “The Determinants of Substance Abuse in the Workplace,” Social Science Journal, vol. 33 (1996), pp. 55, 56. See also National Institute on Alcohol Abuse and Alcoholism, U.S. Department of Health and Human Services, Sixth Special Report to the U.S. Congress on Alcohol and Health, no. 22 (1987).

[2] The main components of the estimated costs of alcohol abuse include health care expenditures (12.3 percent); productivity losses due to premature death (21.2 percent); productivity impairment due to alcohol-related illness (45.7 percent); and property and administrative costs of alcohol-related motor vehicle crashes (9.2 percent). The main components of the estimated costs of drug abuse include health care expenditures (10.2 percent); lost productivity of incarcerated perpetrators of drug-related crimes (18.3 percent); lost legitimate production due to drug-related crime careers (19.7 percent); other costs of drug-related crime, including police, legal, and corrections services, federal drug traffic control, and property damage (18.4 percent); and impaired productivity due to drug-related illness (14.5 percent). National Institute on Alcohol Abuse and Alcoholism (NIAAA) and the National Institute on Drug Abuse (NIDA), The Economic Costs of Alcohol and Drug Abuse in the United States, May 13, 1998.

[5] Equal Employment Opportunity Commission, Technical Assistance Manual on the Employment Provisions (Title I) of the Americans with Disabilities Act § 8.2, January 1992 (hereafter cited as EEOC Technical Assistance Manual on the ADA).

[6] 42 U.S.C. § 12114(a) (1994); 29 C.F.R. § 1630.3(a) (1999). See, e.g., Shafer v. Preston Mem’l Hosp. Corp., 107 F.3d 274 (4th Cir. 1997) (current illegal drug user is not covered). Ellen Weber, director of the national office of the Legal Action Center, a law and policy office that specializes in alcohol, drug, and AIDS issues, said in her testimony before the Commission that prior to passage of the ADA, individuals with current drug problems were protected under the Rehabilitation Act against discrimination to the extent they could perform their jobs. “[The] decision to eliminate coverage,” Ms. Weber testified, “was based on nothing other than the pure political decision that nobody wanted to appear soft on drugs. . . .” Ellen Weber, testimony before the U.S. Commission on Civil Rights, hearing, Washington, D.C., Nov. 12–13, 1998, transcript, p. 25 (hereafter cited as Hearing Transcript). Ms. Weber argued that this change in the law “did nothing more than . . . deter some individuals from getting into treatment and driving the problem underground in an effort to hide that problem from an employer.” Ibid., pp. 25–26.

[7] Under the ADA, “illegal use” is broader than just the use of drugs that are commonly viewed as illegal. It includes the use of illegal drugs that are controlled substances (e.g., cocaine) as well as the illegal use of prescription drugs that are controlled substances (e.g., Valium). For example, in Nielsen v. Moroni Feed Co., 162 F.3d 604, 611, fn. 12 (10th Cir. 1998), the court stated there “is no doubt that, under the ADA, illegal drug use includes the illegal misuse of pain-killing drugs which are controlled by prescription as well as illegal street drugs like cocaine.”

[8] EEOC Technical Assistance Manual on the ADA § 8.3. See, e.g., Wood v. Indianapolis Power & Light, 2000 U.S. App. LEXIS 1769 (7th Cir. 2000), No. 99-1652 (meter reader who tested positive for cocaine and marijuana use was not protected by the ADA).

[10] 42 U.S.C. § 12114(b) (1994). A “rehabilitation program” may include inpatient, outpatient, or employee assistance programs, or recognized self-help programs such as Narcotics Anonymous. EEOC Technical Assistance Manual on the ADA § 8.5.

[11] 42 U.S.C. § 12114(b). See Ackridge v. Dep’t of Human Servs., City of Philadelphia, 3 AD Cases (BNA) 575, 576 (E.D. Pa. 1994), in which the plaintiff claimed that she was discriminated against because she was incorrectly regarded as an alcoholic and/or a substance abuser. In dicta, the court noted that if the plaintiff was in fact regarded as a drug abuser (and if she was not using drugs), or if she was regarded as an alcoholic, she might have a valid ADA claim. Id. at 576. See also EEOC Technical Assistance Manual on the ADA, which states that “tests for illegal use of drugs also may reveal the presence of lawfully-used drugs. If a person is excluded from a job because the employer erroneously ‘regarded’ him/her to be an addict currently using drugs illegally when a drug test revealed the presence of a lawfully prescribed drug, the employer would be liable under the ADA.” Ibid. at § 8.9.

[12] See EEOC Technical Assistance Manual on the ADA § 8.5. See also Hartman v. City of Petaluma, 841 F. Supp. 946, 949 (N.D. Cal. 1994) (there must be “some indicia of dependence” to be considered substantially limiting a major life activity).

[13] EEOC Technical Assistance Manual on the ADA § 8.5.

[14] The Institute for a Drug-Free Workplace, a nonprofit corporation, was established in 1989 as an independent private sector coalition. Its membership includes major employers and employer organizations, including leading American companies in petrochemical, manufacturing, high technology, construction, pharmaceutical, hospitality, retail, and transportation industries. The institute is active on legislative, legal, and regulatory issues at the federal, state, and local levels. See 1999–2000 Guide to State and Federal Drug-Testing Laws, by Mark A. de Bernardo and Nancy N. Delogu, published by the Institute for a Drug-Free Workplace, Washington, D.C.