

# The ADA, Addiction and Recovery

## ADA Coalition of CT Annual Conference

November 18, 2021



Oce Harrison  
Project Director

New England  Center



A project of the  
Institute for Human Centered Design



Stacy Hart  
ADA Specialist

A member of the

 National Network

# Purpose



Americans with Disabilities Act

1. Definition of disability and how it applies to:
  - Alcohol Use Disorder
  - Substance Use and Opioid Use Disorders
2. How the ADA protects people with addiction recovery in:
  - Employment: Title I of the ADA
  - State and Local Governments: Title II of the ADA
  - Public Accommodations: Title III of the ADA

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# National Network

Information, Guidance, and Training on the  
Americans with Disabilities Act



**ADaTa.org**

**1-800-949-4232 voice/TTY**

Funded by

National Institute on Disability, Independent Living and Rehabilitation Research  
through the Administration for Community Living and US Health and Human Services

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# Institute for Human Centered Design



An international education and design non-profit dedicated to enhancing the experiences of people of all ages and abilities through excellence in design.

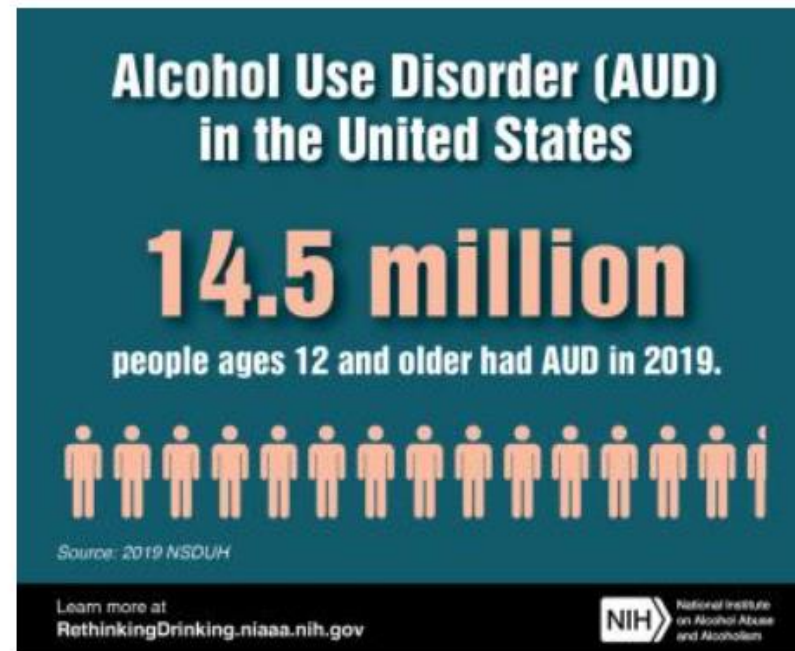


[www.HumanCenteredDesign.org](http://www.HumanCenteredDesign.org)



National Institute  
on Alcohol Abuse  
and Alcoholism

## Alcohol Facts and Statistics



**Web:** <https://www.niaaa.nih.gov/publications/brochures-and-fact-sheets/alcohol-facts-and-statistics>

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# We Do Recover!



## Evidence That Tens of Millions of Adults in the US Have Recovered From a Substance Use Disorders

- More than 1 in 10 adults in the U.S. reported ever having a substance use disorder (SUD) (27.5 million).
- Among those with SUD, nearly 75 % reported being in recovery (20.5 million) .

Jones, C.M., Noonan, R.K., Compton, W.M. (2020). Prevalence and correlates of ever having a substance use problem and substance use recovery status among adults in the United States, 2018 [Epub ahead of print]. Drug and Alcohol.

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# Americans with Disabilities Act



July 26, 1990

President George H. Bush Signing the ADA

- Ensures that people with disabilities have the same rights and opportunities as everyone else.
- Includes people with addiction to alcohol, and people in recovery from opioid and substance use disorders.

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# The Structure of ADA

## **Employment: Title I**

This title focuses on reasonable accommodations  
- a change in the way work is performed.

## **State and Local Government: Title II**

Requires equal access to services, programs, and activities in public education, corrections and the courts etc.

## **Places of Public Accommodation: Title III**

Requires equal access to goods and services in places such as sober homes, health care facilities and other private businesses and non-profits that serve the public.



# ADA

## Definition of Disability

1. Has a physical or mental impairment that substantially limits one or more **major life activities**; *or*
2. Has a **history** of a physical or mental impairment that substantially limits one or more major life activities; *or*
3. Is **regarded** as having such an impairment.

\*A person must meet only one of the three prongs to qualify as a person with a disability under the ADA.

# What are Major Life Activities?

Major life activities include, but are not limited to:

Caring for oneself, thinking, learning, working, breathing, sleeping, seeing, hearing, and major bodily functions such as neurological and brain functions.

\*Not an exhaustive list



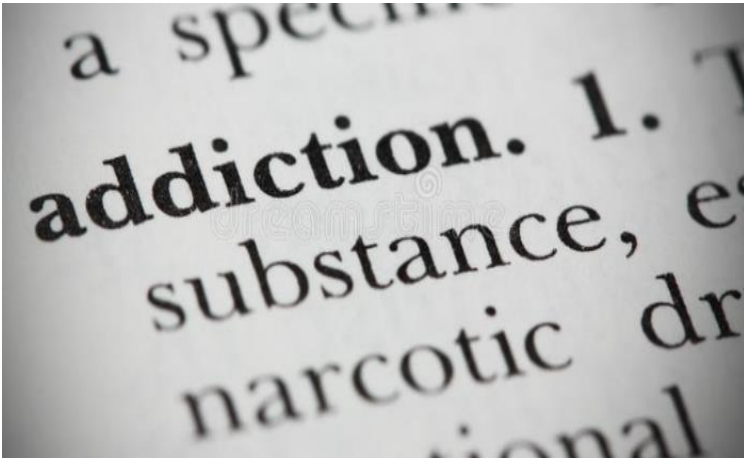
# Alcohol Use Disorder **versus** Substance Use Disorder



The ADA makes a ***distinction*** in how it addresses:

- an **addiction to alcohol**;
- and the **illegal use of drugs**.

# Addiction to Alcohol



- Is generally a “disability” regardless of whether it’s in the present or in the past.
- A person still has to meet the definition of disability.

# Scenario

- Michael is often late for work.
- His supervisor warns him about his lateness.
- The third time he's late, his supervisor gives him a written warning, stating that one more late arrival will result in termination.
- Michael tells his supervisor that he has an addiction to alcohol.
- His late arrivals are due to his drinking, and he needs time off for detox and treatment.
- **Does Michael have protections under the ADA?**



- **Yes**, Michael is a person with a disability (alcohol use disorder).
- However, it's complicated.
- The employer does not have to withdraw the warning.
- The employer must grant Michael's request to take leave to enter a rehab program, unless the employer can prove that Michael's absence would cause a great difficulty or expense (undue hardship).



# Substance Use Disorders

recovery

The ADA protects a person who is:

- in recovery; and
- is no longer engaging in the current illegal use of drugs.

# What Does “In Recovery” Mean?

1. Is in recovery from substance use disorder;
2. Has ceased engaging in the current illegal use of drugs;
3. Is participating in a supervised rehabilitation program, *or*
4. Has been successfully rehabilitated.

If a person meets **one** of these conditions, then the person is protected from discrimination.

# What Does “Illegal Use of Drugs” Mean?



- Use of illegal drugs such as heroin or cocaine.
- Use of controlled substances such as opioids:
  - BUT** person has no prescription
  - OR** has a fraudulent prescription
  - IS** using more than prescribed

# What Does “Current” Mean?

**Current illegal use of drugs** means:

“Illegal use occurred recently enough to justify a reasonable belief that a person’s drug use is a real and ongoing problem.”

Under the ADA, current drug use is decided on a case-by-case basis.

# Scenario

**Application for Employment**

accommodations for persons with disabilities in the hiring process. If your disability  
se let us know, and we will provide assistance.

Date of Application

Middle Initial

First Name

City

18 years of age or over?

☐ No If No, Date of Birth

Education

Marianna has been in recovery from heroin use disorder for three years. She applies for a job that she is qualified to do. The employer refuses to hire her because he learns about her past history.

**Is she protected under the ADA?**

**Yes,** Marianna is protected under the ADA because she:

- Has a history of an impairment (addiction to heroin)
- Has refrained from the use of illegal drugs for three years which is a good indication that there is not an on-going problem.

The potential employer violated the ADA when he refused to hire Marianna because of her recovery status.

# Scenario



- Julie has been in recovery for 5 yrs. from addiction to Oxycontin.
- She is under medical treatment for opioid use disorder.
- She works in the office at a day care center.
- Her boss learns about her history of substance use disorder & tells her to “get off methadone or you’ll be fired.”
- **Does Julie have protections under the ADA?**
- **Yes**, Julie has a history of addiction and is being regarded as a current user of illegal drugs because of her medical treatment.



What if Julie's employer found out that she recently used cocaine while taking medication to treat her addiction?

**Would she have rights under the ADA?**

Prepared by the Legal Action Center with support from Partners for Recovery

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illegal

**No, the ADA does not protect individuals who are  
“currently engaging in the illegal use of drugs.”**

What if Julie's employer found out that she recently used marijuana while taking medication for her addiction?

**Would Julie have protections under the ADA?**

☐ Yes

☐ No



**No, Julie would not be  
protected under the ADA  
because...**

# Under Federal Law, Marijuana, is Illegal in Any Form and For Any Reason





Even when used to treat a medical condition with a card, certificate or medical prescription

**\* However, check your state law.**

# State Medical Marijuana Laws May Provide Protections

- If medical marijuana is legal under **state law**, employers may need to consider **reasonable accommodations** for employees with disabilities for offsite use of medical marijuana under state law.

\*However, an employee who uses or is high at work has **NO** protections under either federal or state law.

# Connecticut's State Medical Marijuana Registration Certificate Law

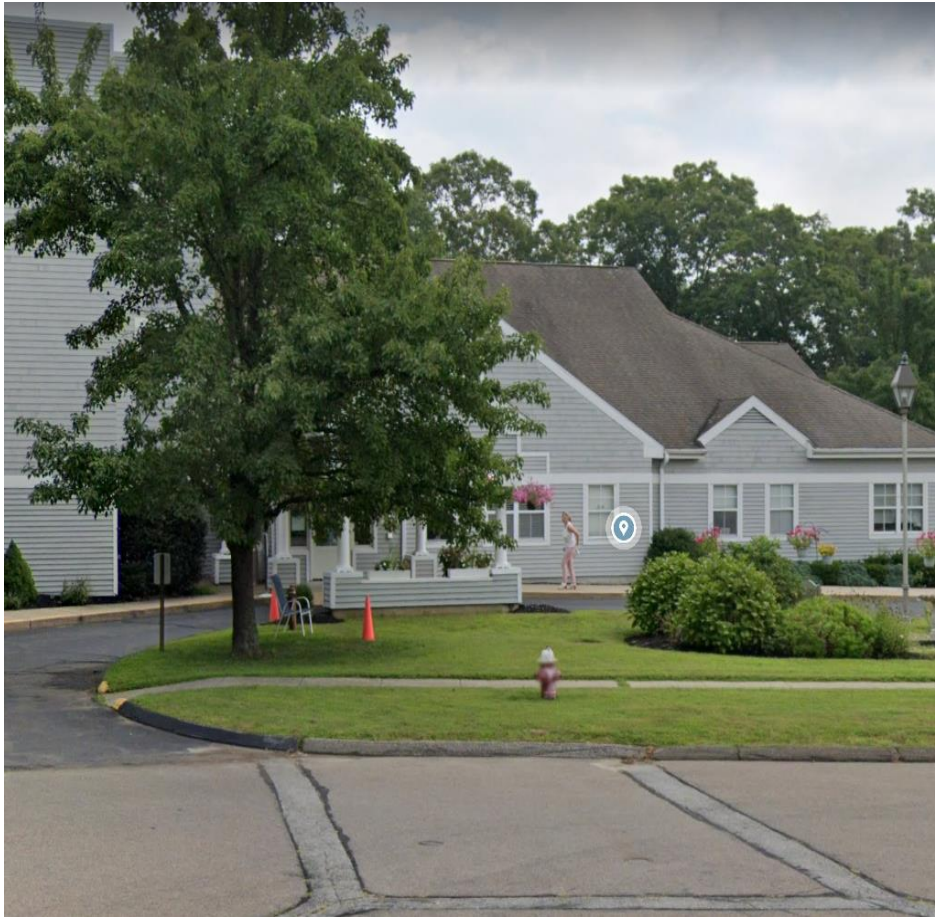


Does CT's state medical marijuana law intersect with employment and disability?

[https://www.cga.ct.gov/current/pub/chap\\_420f.htm](https://www.cga.ct.gov/current/pub/chap_420f.htm)



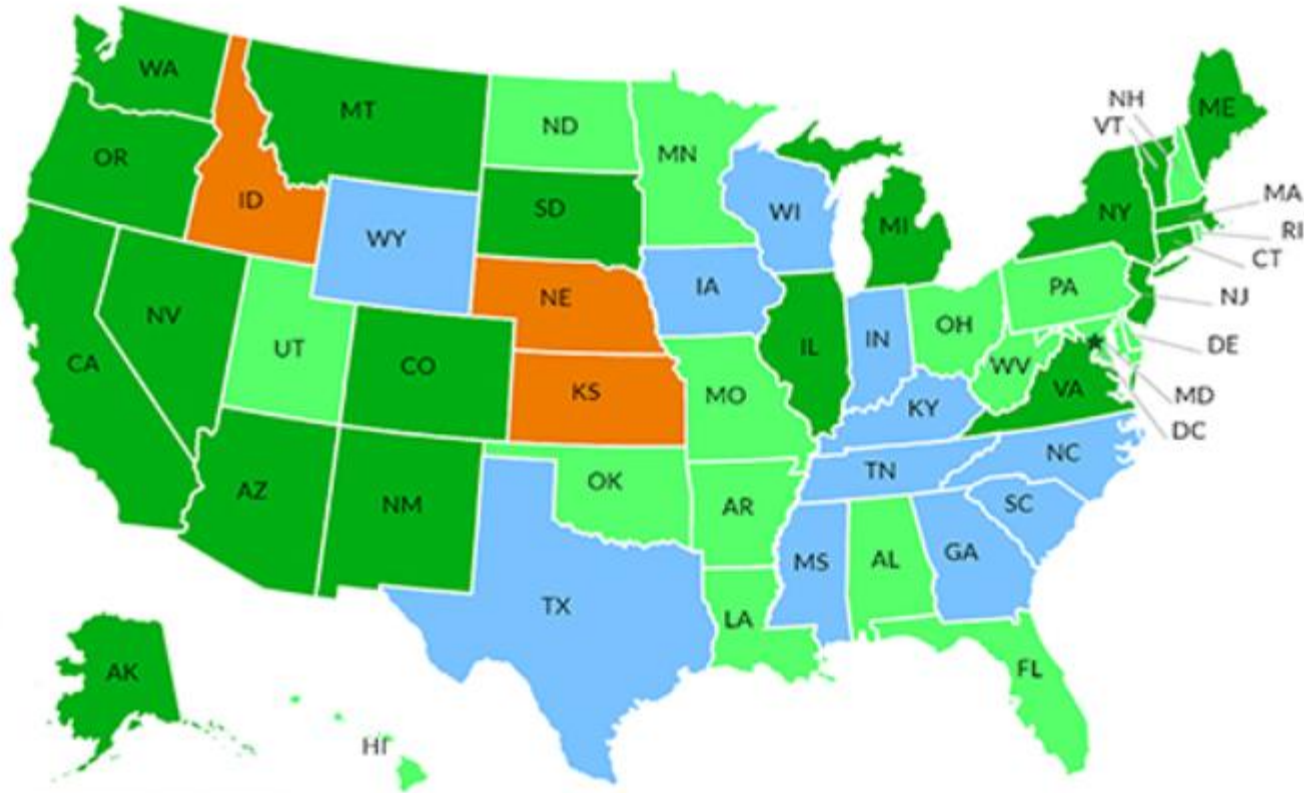
# Katelin Noffinger v. SSC Niantic Operating Co



- Katelin notified the employer she was a registered medical marijuana user only at night and before bed so she would not be impaired at work.
- Employer refused to hire because she tested positive for marijuana in a post offer and pre-employment drug test.
- Employee won the right as a person with a disability for off-site use of legally prescribed medical marijuana.
- First of it's kind lawsuit because the company was also a federal contractor.



# Marijuana Legalization as of June 22, 2021



**36 states and four territories allow for the medical use of cannabis products.**

# Questions?

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# Legal Use of Prescription Medication

James became addicted to Percocet while taking the medication in a prescribed manner and in prescribed amounts.

**Is James protected under the ADA?**





**Yes,** he is protected under the ADA because he is legally using drugs.

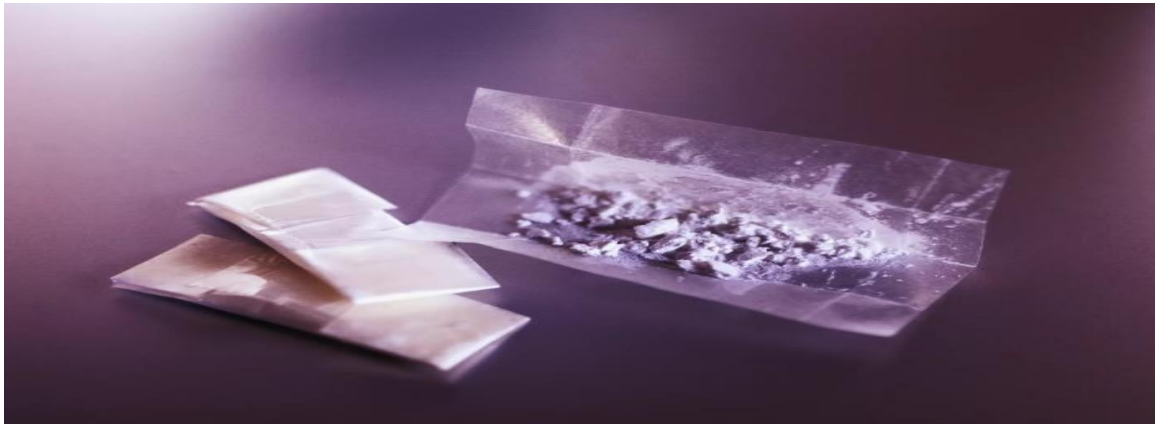
\*But, if he takes more than prescribed, he may not be covered.



James wants to take a leave of absence from his job to taper off Percocet.

**Does James have protections under the ADA?**

Yes, he is a person with a disability and may have rights to an accommodation. He needs to discuss the possibility of an accommodation with his boss.



What if James' employer found out that he was using heroin on the job?

**Would he have rights under the ADA?**

**No,** James is not protected under the ADA because he is illegally using drugs.

# Last Chance Agreement



- However, nothing in the ADA would limit the employer's ability to offer leave or other assistance that may allow James to receive treatment.
- Last Chance Agreement

# State and Local Governments:

## Title II of the ADA

People with disabilities must be able to participate in or benefit from all state and local government **programs, services & activities.**

- Courts
- Law enforcement
- Public education
- Public Transportation
- Recreation
- Health care
- Social Services
- Voting

# Scenario

- Tom is taking medication to treat his addiction.
- He appeared in family court and requested that he begin to see his kids on the weekends.
- The judge responded to his request saying, “You’ll see your kids when you get off Suboxone.”

**Is Tom protected under the ADA?**



# Tom Hits the ADA Jackpot

- Yes, Tom has a **history** of addiction.
- Family court is **regarding** the use of Suboxone as though it is an illegal drug.
- Tom's use of Suboxone cannot, by itself, justify a refusal to let Tom see his kids on weekends.



# Scenario



People who enter the correctional system with medications for opioid use disorders are discontinued on their medications.

**Are inmates protected under the ADA?**

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**Yes,** generally correctional systems have an obligation to provide legally prescribed medications to people entering with a prescription.

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# Public Accommodations:

## Title III of the ADA

ADA requires places of business and non-profits to provide goods and services to people with disabilities.

- Pharmacies
- Insurance offices
- Health care providers
- Restaurants
- Movie theaters
- Private schools
- Hospitals
- Health care
- Social service centers
- Establishments
- Day care centers
- Hotels

# Recovery Homes and Sober Houses



Some won't let residents use medicine to treat opioid use disorders.

## Do residents have protections under the ADA?

- It may be a violation of either the ADA or the Fair Housing Act (FHA) to turn people away from sober and halfway houses for using medication to treat their addiction.
- Both the ADA and FHA requires businesses and non-profits to grant “reasonable modifications” so that individuals with disabilities can access equal housing opportunities.

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- To date, this is a controversy that has not yet been tested in a court of law UNTIL NOW!
- The case is against a the well known... **The Salvation Army...**



# Mark Tassinari v. The Salvation Army



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Judge ordered a person into the **Salvation Army program as a condition of probation.**

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Person was **ejected from the rehabilitation center** after he started taking **doctor-prescribed Suboxone.**

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**Salvation Army bans medication** used to treat addiction in rehab programs.

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**First of its kind lawsuit** about recovery programs.

# Complaint: Mark Tassinari v. The Salvation Army

**Mark Tassinari v. The Salvation Army, et. al.** (May 14, 2021)

**Web:** [creeclaw.org/wp-content/uploads/2021/05/2021-05-14-1-Complaint.pdf](http://creeclaw.org/wp-content/uploads/2021/05/2021-05-14-1-Complaint.pdf)

**Source:** Civil Rights Education and Enforcement Center (CREEC)



# Physical Rehabilitation and Nursing Homes



- The US Office for Civil Rights in MA entered into eight different settlement agreements with groups operating rehabs and nursing facilities.
- These groups failed to accept patients undergoing treatment with medications for opioid use disorders.
- Individuals were seeking physical rehab or nursing care for health issues unrelated to their addiction.
- Some of these facilities are in CT.

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# Massachusetts General Hospital



- DOJ Office of Civil Rights in MA entered a **settlement agreement** with **Mass General Hospital** for **not providing** a lung transplant because a patient was taking **medication** for their addiction.

# New England Orthopedic Surgeons



- The practice violated the ADA by turning away patients treated for OUD.
- The practice will adopt a non-discrimination policy, provide training on the ADA and OUD, and pay two complainants \$15,000.

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# One Big Exception to the Rule: The Obligations of Health Care Providers



Health care providers must provide services to individuals even when they are currently engaging in the illegal use of drugs.

# In Summary



**Americans with Disabilities Act**

1. People with addiction are people with disabilities under the ADA.
2. The ADA applies to addiction to alcohol and the illegal use of drugs differently.
3. The ADA provides civil rights protections in employment, state and local services, and businesses and non-profits.
4. Knowing your rights can support your recovery journey!

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# How to File an ADA Complaint

- **Employment**

US Equal Employment Opportunity Commission (EEOC)

**Web:** <https://www.eeoc.gov/employees/howtofile.cfm>

**Phone:** 1-800-669-4000 or **Email:** [info@eeoc.gov](mailto:info@eeoc.gov)

- **State and Local Governments and Public Accommodations**

Department of Justice

**Web:** [https://www.ada.gov/filing\\_complaint.htm](https://www.ada.gov/filing_complaint.htm)

**Phone:** 1-800-514-0301

- **Connecticut US Attorney's Office of Civil Rights**

**Complaint Portal:** <https://civilrights.justice.gov/>

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# Resources



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# New England ADA Center's [ADA, Addiction Recovery Webpage](https://www.newenglandada.org/addiction-and-recovery)

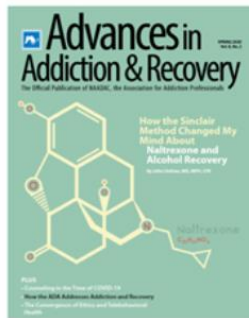
## Webinar



## Frequently Asked Questions



## Advances in Addiction and Recovery Magazine



## ADA, Addiction and Recovery Fact Sheet Series



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**Web:** <https://www.newenglandada.org/addiction-and-recovery>

# ADA National Network Publications

- Reasonable Accommodations in the Workplace

**Web:** [adata.org/factsheet/reasonable-accommodations-workplace](http://adata.org/factsheet/reasonable-accommodations-workplace)

- Work-Leave, the ADA, and the FMLA

**Web:** [adata.org/factsheet/work-leave](http://adata.org/factsheet/work-leave)



Oce Harrison, Project Director  
[oharrison@IHCDesign.org](mailto:oharrison@IHCDesign.org)  
1-617-695-1225 x227

# Thank You!

## Questions about the ADA?

**1-800-949-4232**

**[www.NewEnglandADA.org](http://www.NewEnglandADA.org)**



Stacy Hart, ADA Specialist  
[shart@IHCDesign.org](mailto:shart@IHCDesign.org)  
1-617-695-0085

# Questions?

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