

Appendix B

SUMMARY OF FEDERAL ANTI-DISCRIMINATION PROHIBITIONS

The Americans with Disabilities Act of 1990 (“ADA”) and related state and federal laws generally prohibit organizations from discriminating against *qualified* people with *disabilities* who are able to perform the *essential job functions*, with or without a *reasonable accommodation* (see appendix E).

Mental health disorders are qualify as disabilities, even if symptoms are controlled by medications or other means. People are also protected under this law when they are “regarded as” having a disability, though they might not actually have one.

Many young people with mental illness also have struggled with substance abuse. Although alcoholism and drug addiction both are disabilities under the ADA, they are treated differently.. An alcoholic is viewed as having a disability.

In general people with a *history* of drug addiction who not currently using drugs and have been *rehabilitated* are covered under the ADA. The issues with regarding illegal drug addiction and use are more complex, and addressed briefly in the box at the end of this appendix.

This kind of definition essentially places peer providers within the legally protected class of people with disabilities. That is, peer providers are hired because of their experience of having a mental health condition that impaired functioning of living skills, and are thus at the very least seen having such disability by employers.

Thus, peer provider functions always considered essential are using one’s story to assist and inspire clients, providing peer support, and advocating for the clients participation in treatment. The written job description, personnel policies, and the position’s professional code of ethics (chapter 1) provide the strongest evidence of essential functions. Essential functions can also include specific duties related to the typical peer role, such as systems navigation and leading wellness classes.

The ADA also prohibits disability-based harassment, offensive conduct that becomes a condition of continued employment, or severe or pervasive conduct that creates what a reasonable person would consider an intimidating or hostile workplace ([See EEOC comment](#)). The employer is therefore obligated to encourage reports of harassment and provide an effective complaint or grievance process. The employer is also obligated to investigate reports on other information about harassment.

The ADA essentially mandates equal opportunities in employment for people with disabilities by establishing their rights to reasonable accommodations, assistance or changes to a position or workplace that will enable an employee to do his or her job despite having a disability. We discuss this in greater detail in Chapter 7 and appendix E.

Illegal drug use and the ADA

Someone who is addicted to illegal drugs has a disability only if s/he is not *currently* using illegal drugs. According to the United States Commission on civil rights (<http://www.usccr.gov/pubs/ada/ch4.htm>):

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.” 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. As a result, an employer does not violate the ADA by uniformly enforcing its rules prohibiting employees from illegally using drugs.

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;
- who are currently *participating in a rehabilitation* program and are no longer engaging in the illegal use of drugs; and
- who are *regarded, erroneously*, as illegally using drugs.

A former drug *addict* may be protected under the ADA because the addiction may be considered a substantially limiting impairment. 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.