IN ADDICTION RECOVERY: KNOW YOUR RIGHTS

GAIN FAIR ACCESS TO JOBS, HOUSING AND HEALTH CARE SERVICES

Promoting Addiction Treatment, Prevention, and Recovery through Advocacy and Education

- Public Policy and Information
- Friends of Addiction Recovery-NJ
- Care Coordination - Substance Abuse Intitiative
- DUII Project
IN ADDICTION RECOVERY: KNOW YOUR RIGHTS
NCADD-NJ- Promoting Addiction Treatment, Prevention and Recovery Through Advocacy and Education

criminal records
employment
voting
policy
housing
licenses
health care
services
government
education
It is well established that knowledge is power. Knowing one’s rights empowers people in recovery from addiction, many of whom have been subjected to discriminatory practices related to employment, housing, or health care. Discrimination against individuals in treatment for an addiction or in recovery is not merely wrong, in many cases it is illegal.

To overcome stigma and discrimination, people in recovery or who are receiving treatment need to understand the rights, responsibilities and remedies the law affords them. Knowing one’s rights can mean gaining fair access to a job, housing, or health services.

This brochure is intended to give an overview of the rights responsibilities and remedies available to a recovering person or someone who cares about a recovering person. It covers a wide selection of topics affecting people in treatment and recovery. The topics in this brochure were identified based on a survey conducted by the National Council on Alcoholism and Drug Dependence-New Jersey and include:

**Employment**  
**Criminal records**  
**Government Services and programs**  
**Licenses**  
**Education**  
**Voting**  
**Housing**  
**Policy Making**

The legal issues in this brochure are not black and white, but rather are shaded in gray. If someone in recovery has experienced issues outlined in here, they will want to consult with an attorney to ensure their rights are protected.

**BASIC ANTI-DISCRIMINATION LAWS IN NEW JERSEY**

The Law Against Discrimination (LAD) is the primary law in New Jersey that protects people in treatment and recovery from unfair discrimination. It protects individuals against discrimination in employment, housing, public accommodations and certain business transactions. Although the LAD provides some protection for those addicted to alcohol and drugs, there are conditions and restrictions placed on these disabilities.

**WHAT IT COVERS**

The LAD makes it unlawful to treat people differently based on a mental or physical disability or perceived disability. “Disability means… a psychological, physiological or neurological condition which prevents the normal exercise of any bodily or mental functions or is demonstrable, medically or psychologically, by accepted clinical or laboratory diagnostic techniques.” Although the LAD is generally interpreted and applied like the American’s with Disabilities Act (ADA), the definition of disability is broader under the LAD.

**WHOM IT COVERS**

Alcoholism that meets the above conditions is considered a disability. Drug addiction that meets the above conditions may be a protected disability only under certain conditions.

People who currently engage in illegal drug use are not protected. However, illegal drug use that meets the above condition is a protected disability when the person:

1. Is no longer using illegal drugs;
2. Has successfully completed a supervised drug rehabilitation program and
is no longer using illegal drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use; or

(3) Is participating in a supervised rehabilitation program and is no longer using drugs.

People who currently engage in drug use, however, should not be denied health services or services provided in connection with drug rehabilitation on the basis of the current illegal use of drugs if they are otherwise entitled to such services.

WHAT IT DOES NOT COVER

Although persons with alcohol dependence are more broadly covered than those with addictions to illegal drugs, neither group receives blanket protection. In addition to someone who is currently using illegal drugs, neither a person with alcoholism or drug addiction is protected if they pose a direct threat to the safety of others or to themselves. Nor is misconduct necessarily protected, even if it may be related to their substance use disorder.

EMPLOYMENT

Can an employer refuse to hire or terminate one’s employment because they go into treatment or because they are in recovery from an addiction?

In general, the answer is no, but there are many exceptions to this rule. Employment is an important factor for recovering people trying to rebuild their life. The LAD, the ADA and New Jersey’s Rehabilitated Convicted Offenders Act (RCOA) provide some protection for those who are addicted to alcohol or drugs, in treatment, or in recovery.

THE LAD

Employers may not disqualify, fire or discriminate against a qualified job applicant or employee on the basis of a disability, in other words, because someone is in treatment or in recovery. However, they may take these actions if the applicant or employee:

- Poses a direct threat to the safety of others or to themselves,
- Engages in misconduct,
- Violates the rules,
- Commits a crime, or
- Is otherwise not qualified for the job.
- Currently uses illegal drugs.

Disabled persons seeking protection under the LAD/ADA are held to the same job performance standards as non-disabled persons.

REASONABLE ACCOMMODATIONS

Once a person is found to have a disability, the LAD requires employers to make reasonable accommodations to enable the person to perform their job responsibilities, as long as it does not create an undue hardship. New Jersey courts have interpreted reasonable accommodation to mean providing, where feasible, one opportunity for rehabilitation. Other reasonable accommodations may include time off to attend counseling appointments, or a change in job responsibilities.

MEDICAL LEAVE

The federal Family and Medical Leave Act (FMLA) al-
allows for up to 12 weeks of unpaid leave in a 12-month period to receive medical treatment. This includes treatment for a substance use disorder. An employer may not take action against an employee for requesting or taking this leave. However, an employer can take action against the employee if she or he violates a workplace rule, engages in misconduct, or currently uses illegal drugs. To be eligible, an employee must have been employed by the covered employer for at least one year and worked 1,250 hours during that time.

The FMLA provides time off from work due to an employee's own disability, while the NJ Family Leave Act (NJFLA) does not provide covered employees with leave for their own disabilities.

JOB TRAINING
The federal Workforce Investment Act prohibits federally funded job training and placement programs from discriminating against people with disabilities. However, the applicant cannot be currently using illegal drugs. The Workforce Investment Act has been implemented in New Jersey.

DRUG TESTS AND QUESTIONS REGARDING A DISABILITY
An employer may not use information about someone's disability in a discriminatory manner. They may not treat a person less favorably if they are qualified to perform the job. They must maintain confidentiality about the employee's addiction or treatment for substance use disorders.

BEFORE A JOB OFFER
Employers may not ask an applicant if they have or have had a disability. They may not ask an applicant if they are in recovery or have been in treatment. Nor may they require a medical exam. However, they may ask an applicant if they currently use alcohol or illegal drugs.

AFTER A JOB OFFER
Employers may require a person to undergo a medical exam that may reveal a past or current substance use disorder. Employers are also permitted to ensure that a workplace is free from alcohol and drugs. Drug tests are permitted prior to employment and during employment so long as they are also required for non-disabled employees.

CRIMINAL RECORDS AND EMPLOYMENT
Employers are permitted to ask for and obtain criminal records, which include both arrests and convictions. When they use this information to exclude someone from employment they must provide notice and an opportunity to confirm or deny the accuracy of the record.

New Jersey’s Rehabilitated Convicted Offenders Act (ROCA) may offer some assistance in addressing discrimination towards anyone convicted of drug- or alcohol-related crimes. It provides that no licensing board may disqualify or discriminate against an applicant because they have been convicted of a crime except in cases where the conviction relates adversely
to the license or certificate sought. There are several factors listed in determining whether the conviction relates adversely to the license or certificate sought, including:

- **Nature and seriousness of the crime**
- **Circumstances under which the crime occurred**
- **Date of the crime**
- **Age of the person when the crime was committed**
- **Whether the crime was an isolated incident**
- **Social conditions which may have contributed to the crime**
- **Evidence of rehabilitation**

Licensing authorities are precluded from disqualifying or discriminating against an applicant if s/he shows a certificate indicating that they have been rehabilitated to a degree that his/her engaging in the proposed employment would not threaten the welfare of society.

The licensing authority may, however, disqualify an applicant if the individual has been addicted to drugs or alcohol within four months of the application.

General licensing requirements allows a board to refuse to admit a person who is “presently engaged in drug or alcohol use that is likely to impair the ability to practice the profession or occupation with reasonable skill and safety. “Presently” means currently or any time within the previous year.

**EXPUNGEMENT**

In New Jersey, under certain conditions, one may petition to have his/her criminal record expunged. Subject to some exceptions once his/her record is expunged the events are deemed not to have occurred, and they can answer any inquiries about them accordingly.

- If a person has not been convicted of any additional offenses other than two disorderly or petty disorderly offenses, they may apply to have their criminal record expunged 10 years from the date they complete probation or parole, pay fines, or are released from incarceration, whichever is later.

- Convictions for the sale or distribution or possession with intent to sell cannot be expunged except for small amounts of marijuana or hashish.

- If a person is 21 years old or younger and is convicted for possession or use of a controlled substance, they may apply to have their record expunged in one year if they have not violated the conditions of their probation or parole and have not been convicted of another crime following their discharge from probation or parole.

- If a person has been convicted of violating a municipal ordinance, they may have their record expunged after two years if they have not been convicted of any additional offenses other than two disorderly or petty disorderly offenses.

**GOVERNMENT ASSISTANCE**

In New Jersey, individuals convicted of:

- Possession or use of a controlled dangerous substance will be eligible for benefits and food stamps if they are enrolled in or have successfully completed treatment and submit to drug testing while in treatment and 60 days thereafter. If they test positive, they lose their eligibility. While a person is in treatment, the cash benefits and food stamps are issued to the treatment program.

- Distribution or sale of a controlled substance can be eligible for food stamps and medical assistance if they enroll in or have completed a residential treatment program.
DRIVING WHILE INTOXICATED

<table>
<thead>
<tr>
<th>OFFENSE</th>
<th>FINE</th>
<th>COMM SERVICE</th>
<th>DETAINMENT</th>
<th>LOSS OF LICENSE</th>
<th>IGNITION LOCK DEVICE</th>
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<tbody>
<tr>
<td>1st -.08%</td>
<td>$250-$400</td>
<td></td>
<td>12-48 hours. In courts discretion 30 days</td>
<td>3 months</td>
<td></td>
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<tr>
<td>1st - Over .10%</td>
<td>$300-$500</td>
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<td>12-48 hours. In courts discretion 30 days</td>
<td>7 months - 1 year</td>
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<tr>
<td>2nd</td>
<td>$500-$1000</td>
<td>30 days</td>
<td>48-90 days (check)</td>
<td>2 years</td>
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<tr>
<td>3rd</td>
<td>$1000</td>
<td></td>
<td>180 days, 90 of which can be served in treatment</td>
<td>10 years</td>
<td>Required</td>
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DRIVER’S LICENSE
Conviction of Crime Involving a Controlled Dangerous Substance
New Jersey law requires people convicted of drug offenses to forfeit their driver’s license for a period of not less than six months and not more than two years unless the court finds compelling circumstances warranting an exception. Compelling circumstances exist if the forfeiture of the person’s right to operate a motor vehicle will result in extreme hardship and alternative means of transportation are not available. New Jersey, unlike many other states, does not allow for a restricted license for work or treatment during the period of suspension.

EDUCATION
In general, a student who is currently enrolled in school and is receiving financial aid and is convicted of a drug offense during that time is not eligible to receive any federal grant, loan, or work assistance for the following period:
The possession of a controlled substance: Ineligibility period is:
First offense............... 1 year
Second offense............... 2 years
Third offense............... Indefinite

The sale of a controlled substance: Ineligibility period is:
First offense............... 2 years
Second offense............... Indefinite
A student whose eligibility has been suspended may have eligibility restored before the end of the ineligibility period if she or he completes a drug rehabilitation program that includes two unannounced drug tests; or the conviction is reversed, set aside, or otherwise invalidated.
The law was amended in 2006 to apply only to those students convicted while in school while receiving financial aid. Thus, thousands of students with past drug convictions, many of whom are in recovery from addiction to alcohol and other drugs, are eligible for federal financial aid to students.

VOTING
Individuals who are serving a sentence or on probation or parole for an indictable offense lose the right to vote during that time. However, citizens who have finished their sentences have the right to vote in New Jersey. Individuals who are pre-trial detainees or on bail pending appeal do not lose their right to vote.
Once a person has finished their sentence they can register to vote. If they were registered to vote before they were convicted, they must re-register once they have served their time. When they were convicted, their voter registration was deleted. The registration deadline to vote at the next election is 21 days prior to election day.
Applications to register to vote can be obtained from the Division of Elections, Commissioners Registration office in the County where the person lives, Municipal Clerk, or various State agencies such as the Division of Motor Vehicle offices. A person can also print a registration application at http://www.state.nj.us/lps/elections/voter-registration-application.htm

HOUSING

Can a landlord evict or refuse to rent to a person because they are in treatment or recovery?

In general, under the LAD and the federal Fair Housing Act (FHA), the answer is no. The LAD and FHA prohibit discrimination in housing based upon a disability. Thus, a landlord may not refuse to rent or sell housing, directly or indirectly evict, or discriminate against a person in any other way because they have an alcohol addiction or a past illegal drug addiction.

PRIVATE HOUSING

A person who has been convicted, adjudicated delinquent, or found by a preponderance of evidence in a civil action of a drug-related offense committed on the premises can be evicted if they have not successfully completed or been admitted to a drug rehabilitation program. Such action can also be taken against a tenant if they allow someone to occupy the premises who has been so convicted. To evict a tenant under these conditions, the conviction cannot be more than two years old or more than two years after the person's release from incarceration, whichever is the later.

PUBLIC HOUSING

Federal law allows housing authorities to evict tenants if they or a member of their household or guest engages in drug-related criminal activity on or off the premises. A conviction is not necessary; they must only show that it is more likely than not that the activity took place. Once evicted, the tenants are banned from receiving federal housing assistance for three years. This time-frame can be shortened if the individual demonstrates rehabilitation. The housing authority is given discretion as to whether to evict someone and such discretion should be used with common sense and compassion.

The housing authority may also deny an application if they have reasonable cause to believe any member of the household is using illegal controlled substances, has engaged in drug-related criminal activity within a reasonable time of the application, or has a pattern of use of controlled substances or alcohol that may interfere with the health safety or right of other residents.

REMEDIES

What can an individual do if they believe their rights have been violated?

If one is discriminated against, they may be able to get money damages, a rental, a house, reinstatement of work, back pay, and attorney fees. The person who discriminated against the individual in recovery may also be subject to substantial fines.

There are government agencies set up to investigate complaints that involve violations against the Law Against Discrimination and the Fair Housing Act:

- The New Jersey Division on Civil Rights enforces the Law Against Discrimination. A person can file an administrative complaint with the Division within 180 days of the date of the alleged violation.
• If the complaint involves a State employee, prospective State employees, and persons doing business with the State of New Jersey a person can file a complaint with the New Jersey Department of Personnel.

• If the complaint involves housing, the person can also file a complaint with the US Department of Housing and Urban Development.

• If the complaint involves an owner-occupied two-family home, the person can go to a fair housing organization in their county.

• If the complaint involves the Americans with Disability Act, the person may file a charge with the Equal Employment Opportunities Commission.

The individual will want to provide to the agency:

• Names and addresses of the person or persons alleged to have discriminated against them and names of possible witnesses.

• Documentation to support that claim. Documentation to support the damages being sought, such as wage statements or proof of medical expenses etc.

Once a person files a complaint, the agency is required to investigate it and take action if they find discrimination based on a disability. If the agency finds probable cause that a party was discriminated against, a conference is held to see if the matter can be settled. If it cannot be settled, the case will be set for a hearing and a Deputy Attorney General may be assigned to prosecute the case at no cost to the complainant.

In the alternative, a person can go directly to the New Jersey Superior Court within two years of the alleged violation and sue the person who discriminated against them. The individual will have a right to a jury trial, and will need to hire their own lawyer.

For further information on filing an administrative or court claim and for addresses of these agencies, go to:

New Jersey Department of Law and Public Safety, Division on Civil Rights http://www.state.nj.us/lps/dcr/filing.html


New Jersey Department of Personnel http://www.state.nj.us/personnel/EEO/complaints.htm

Equal Employment Opportunities Commission http://www.eeoc.gov/

**Recovery is an achievable goal.**

**Discrimination against people in recovery must be stopped, and the barriers that are raised by stigma against those with addiction must be removed.**

**POLICY MAKING/CHANGING STATE LAWS**

Recovery is an achievable goal. Discrimination against people in recovery must be stopped, and the barriers that are raised by stigma against those with addiction must be removed.
Each year numerous laws are introduced that may affect a person in recovery. A recovering person may find themselves in a situation where the law treats them unfairly due to an addiction or hinders their recovery. An individual has a right to try to have these unfair or discriminatory laws changed.

Here’s How:

• Talk to people and find stories where the law as written has hindered someone’s recovery,
• Find out who your assembly and senate representatives are by going to http://capwiz.com/ncaddnj/state/main/?state=NJ,
• Recruit other interested and/or impacted individuals and as a group, develop a message,
• Write letters to your representatives,
• Schedule an appointment with your representative or the representative’s aide. Concisely tell them your story and ask them to change the law.