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Combating Discrimination Against People with HIV

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Civil Rights Division
U.S. Department of Justice

**2018 National Ryan White
Conference on HIV Care & Treatment**
National Harbor, MD
Dec. 12, 2018 — 10:30am-Noon



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Disclosures

I have no financial or non-financial arrangement or affiliation with a commercial interest.



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What will you learn today?

- How to identify illegal discrimination against persons with HIV/AIDS (and Opioid Use Disorders (OUD) or other disabilities), in **employment**, **housing**, and the **provision of public & private services**
 - Where you to go next to get more information
-



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Alphabet Soup

- ADA = Americans with Disabilities Act
- DOJ = Department of Justice
- OUD = Opioid Use Disorder
- SUD = Substance Use Disorder
- MAT = Medication-Assisted Treatment (treatment for OUD combining the use of medications such as methadone, buprenorphine, or naltrexone with counseling and behavioral therapies)



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National HIV/AIDS Strategy for the United States: Updated to 2020

Goals:

1. Reducing New HIV Infections
 2. Increasing Access to Care and Improving Health Outcomes for People Living with HIV
 3. Reducing HIV-Related Health Disparities
 - Reducing ***stigma and discrimination*** against people living with HIV
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The Americans with Disabilities Act

- Protects individuals with Disabilities in:
 - Employment
 - Public Services (state/local gov't)
 - Public Accommodations (Private providers of goods and services)
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Who does the ADA protect?

- Someone “substantially limited” in a “major life activity”
 - A. Caring for oneself
 - B. Sleeping
 - C. Gastro-Intestinal Functioning
 - D. Reproduction
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Who does the ADA protect?

- Now includes the operation of a “major bodily function,” including functions of the immune system → HIV/AIDS
 - Includes a person who has a history of an impairment that substantially limited a major life activity → OUD
 - Someone regarded as having a disability
 - Someone associated with a person with a disability
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Definition of “Disability” (cont.)

- OUDs that substantially limit one or more major activities will be considered impairments.
 - The ADA protects an individual who:
 - Has successfully completed a supervised drug rehabilitation program and is no longer using drugs illegally.
 - Is participating in a supervised rehabilitation program and is no longer using drugs illegally.
 - Is mistakenly regarded as taking drugs illegally, but in fact is not.
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EMPLOYMENT

The ADA Employment Provisions Do Not Apply to:

- Employers with <15 employees
 - Private Membership Clubs
 - Native American Reservations
 - Churches and Parochial Schools
-



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The ADA Covers:

- All employment practices, including:
 - Recruitment, advertising, applying, hiring
 - Compensation, promotion & advancement
 - Terms, conditions & privileges of employment, (e.g., leave & fringe benefits, training)
 - Tenure, layoffs, firing
 - Failure to provide reasonable accommodations
-



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What is a Reasonable Accommodation?

- A feasible change in the job environment or in performance of job duties to enable a *qualified individual with a disability* to perform the *essential functions*
 - Only required for **known** limitations: Employee must ask, BUT no “magic words” or formal written request required
 - Employer may request documentary proof of *disability* and of *functional limitation*
 - Employer may choose the less expensive or less burdensome accommodation, as long as it is effective
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When Can An Employer Inquire About a Disability?

- Before making a job offer: **Never**
- After making a conditional offer and before an individual starts: **Sometimes**
 - if all candidates are required to take the same medical exam and/or respond to the same inquiries
- For employees: **Only if:**
 - Medical exams or inquires are *job-related* and *consistent with business necessity*



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Confidentiality

- Information from all medical exams and inquiries must be kept apart from general personnel files as a separate, confidential medical record, available only under limited conditions.
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Retaliation

- It is illegal for an employer to fire, demote, harass or otherwise “retaliate” against an individual for filing a charge of discrimination, participating in a discrimination proceeding, or otherwise opposing discrimination.
 - The ADA also protects individuals from coercion, intimidation, threat, harassment, or interference in the exercise of their rights (or encouragement of someone else exercising their rights) granted by the ADA.
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Enforcement & Remedies

Goal is to make individual whole:

- Back pay, front pay
 - Restored benefits
 - Reasonable accommodations
 - Compensatory damages (for intentional discrimination)
 - Reinstatement
-



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Filing a Complaint

Equal Employment Opportunity Commission

- www.eeoc.gov | info@eeoc.gov
 - 1-800-669-4000 | 1-800-669-6820 (TTY)
 - 53 field offices –
 - Closest to us is Washington; Mon-Fri, 9:00 am-2:00 pm
 - Employee often has only 180 days to file
 - (300 days if state has parallel statute)
-



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Recent DOJ enforcement action

United States. V. City of New York (2017)

- An individual who applied to be a 911 emergency call-taker was given a conditional offer and took a medical examination, disclosed that he has HIV, and was medically disqualified for having a low CD4 count.
 - To settle the case, he was given a new offer and paid \$55,000.
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Employment Resources

U.S. Department of Labor,
Office of Disability Employment Policy

- *Getting to Work: An Online Training Curriculum for HIV/AIDS Service Providers and Housing Providers*
- A Resource Guide for Individuals Seeking to Enter or Reenter the Workforce

<http://www.dol.gov/odep/topics/HIVAIDS/>



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State and Local Government Services

- Public Libraries
 - County Hospitals
 - Public Schools
 - Probation Programs
 - Jails and Prisons
 - Police Departments
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Recent DOJ enforcement actions

- ✓ Pea Ridge School District (Arkansas) – excluded three students after reviewing a document that referenced the HIV status of a family member
 - Cease inquiries regarding the HIV status of students
 - Adopt a non-discrimination policy, including against those “regarded as” or associated with a person with a disability
 - Revise “Communicable Diseases and Parasites” policy
 - Provide staff training
 - Pay \$15,000 in compensatory damages

For more information, visit: www.ada.gov/hiv



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Recent DOJ enforcement actions

- ✓ Union Parish Detention Center (Louisiana) – held a detainee with HIV in isolated, segregated housing for approximately six months because he has HIV.
 - Not segregate detainees based on their HIV status
 - Adopt non discrimination policies, designate an ADA coordinator, and establish an ADA complaint procedure
 - Train all staff annually on HIV and nondiscrimination
 - Pay \$27,500 in compensatory damages

For more information, visit: www.ada.gov/hiv



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What Might OUD Discrimination Look Like?

- A supervised prison release program prohibits people who are currently on MAT from participating—even if they are not currently illegally using drugs.
 - William would benefit from the program, but since it requires individuals to have completely ceased MAT before participating, he is excluded.
-



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What Might OUD Discrimination Look Like?

- A parole board prohibits inmates with a record of drug addiction from consideration for parole.
 - Jim, an inmate, has a record of drug addiction but is not currently illegally using drugs.
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What Might OUD Discrimination Look Like?

- A city adopts and enforces zoning rules that subject residential substance use disorder programs to a more burdensome approval process than the city requires of similar entities.
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Public Accommodations – Private Providers of Goods and Services

- Restaurants, hotels, theaters, libraries
 - Doctors' offices, dentists' offices, hospitals
 - Retail stores, health clubs, museums
 - Private schools and daycare centers
 - *NOT private clubs or religious organizations*
-



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Recent DOJ enforcement actions

- ✓ Milton Hershey School – refused to consider a child for enrollment after his mother disclosed that he has HIV
 - School was required to adopt a policy prohibiting discrimination and requiring equal opportunity for students with disabilities in the school’s programs & services
 - School was also required to provide training to staff and administrators on the requirements of the ADA
 - \$700,000 damages | \$15,000 civil penalty

For more information, visit: www.ada.gov/hiv



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Medical-Related Settings

- Recent DOJ lawsuits include:
 - Pain Management Specialist
 - Plastic Surgeon
 - Use of Standard (Universal) Precautions
 - Healthcare providers may not refer an individual with HIV to another provider or “specialist,” unless they would refer any individual seeking or requiring the same treatment or services.
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Discrimination in health care

- ✓ Genesis Healthcare System (Ohio)
 - When a patient called looking for a general primary care provider, the physician instructed her staff to tell the individual they do not take individuals with HIV
- ✓ Valley Hope Association (Kansas)
 - Addiction treatment facility required patient to have separate room unless he disclosed his HIV to his roommate; excluded patients with HIV from working in the kitchen

For more information, visit: www.ada.gov/hiv



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Discrimination in health care (cont.)

- ✓ **Bariatric Clinics (Pennsylvania; Michigan)**
 - Three different patients were turned away from weightloss surgery because of clinic policies not to take patients with HIV
- ✓ **Castlewood Treatment Center (Missouri)**
 - An eating disorder clinic refused to admit a woman, because of her HIV, but repeatedly led her to believe she would be admitted any day, while encouraging her to go elsewhere. During this delay of up to seven months, her health declined considerably.
 - \$115,000 damages | \$25,000 civil penalty

For more information, visit: www.ada.gov/hiv



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What Might OUD Discrimination Look Like?

- Dora seeks to participate in a mentoring program for young adults through a local nonprofit agency.
 - Dora reveals, as part of the required personal background information, her past struggle with addiction to prescription pills and her pride in her 15 years of being completely drug-free.
 - The agency rejects her application based on her past substance use disorder.
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Resolution

- Injunctive Relief
 - Training
 - Treatment
 - Reporting
 - Compensatory Damages
 - Actual damages
 - Pain & suffering
 - Civil Penalty (for private entities)
-



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To file an ADA complaint

- Provide us with the details of the discrimination and mail, fax, or use our online complaint form:

U.S. Department of Justice
Disability Rights Section – NYA
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530
Fax: (202) 307-1197
www.ADA.gov

- For more information, please call the ADA Information Line:
800-514-0301 (voice) | 800-514-0383 (TTY)
-



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Information and Technical Assistance on the Americans with Disabilities Act

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ada.gov/AIDS

Fighting Discrimination Against People with HIV/AIDS

The Americans with Disabilities Act (ADA) gives Federal civil rights protections to individuals with disabilities similar to those provided to individuals on the basis of race, color, sex, national origin, age, and religion. It guarantees equal opportunity for individuals with disabilities in public accommodations, employment, transportation, State and local government services, and telecommunications.

An individual is considered to have a "disability" if he or she has a physical or mental impairment that substantially limits one or more major life activities, has a record of such impairment, or is regarded as having such impairment. Persons with HIV disease, either symptomatic or asymptomatic, have physical impairments that substantially limit one or more major life activities and thus are protected by the ADA.

Persons who are discriminated against because they are regarded as being HIV-positive are also protected. For example, the ADA would protect a person who is denied an occupational license or admission to a school on the basis of a rumor or assumption that he has HIV or AIDS, even if he does not.

What's New?

[Prevalence and Public Health Implications of State Laws that Criminalize Potential HIV Exposure in the United States](#) -- A journal article, co-authored by the Department of Justice and the Centers for Disease Control and Prevention



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Fair Housing Act (FHA)

Prohibits housing discrimination on the basis of:

- race
 - color
 - religion
 - sex (including sexual harassment)
 - disability (including HIV/AIDS)
 - familial status
 - national origin
-



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Fair Housing Act – Dwellings

Prohibits discrimination in public and private “dwellings,” including:

- Houses, townhouses, apartments, condominiums, mobile homes, trailers
- Nursing homes and assisted living centers
- Group homes
- Student housing
- Homeless shelters*
- Vacation time shares*

** Courts differ on required lengths of stay*



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Fair Housing Act prohibits:

- Refusing to sell or rent after making a bona fide offer
 - Refusing to negotiate for sale of rental of dwelling
 - Otherwise making unavailable or denying a dwelling
 - Setting different terms, conditions, or privileges or providing different services or facilities
 - Making, printing, or publishing a statement or advertisement indicating a preference or limitation
-



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Fair Housing Act prohibits (cont'd):

- Falsely representing that a dwelling is unavailable
 - Refusing to make reasonable accommodations in rules or services for a person with a disability (including HIV/AIDS) to use the housing
 - Refusing to allow a person with a disability (including HIV/AIDS) to make reasonable modifications to his or her dwelling
 - Intimidating, threatening, or interfering with any person for exercising his or her housing rights
-



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Fair Housing Act – limitations

- Single family homes sold/rented by owner without real estate agent
- Owner-occupied buildings with no more than four units
- Dwellings owned by religious organizations or private clubs for their own members' use
- Housing for older persons (only where certain requirements are met)

These exemptions are construed narrowly and entail various requirements.



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Filing a Fair Housing Act complaint

The U.S. Department of Housing and Urban Development (HUD) handles **individual** complaints:

- Hotline: 800-669-9777 (voice); 800-927-9275 (TTY)
- Online: www.hud.gov → Topic Areas → Housing Discrimination
- Complaint must be filed within 1 year of the discriminatory act

DOJ's Housing and Civil Enforcement Section has jurisdiction over allegations of a "**pattern or practice**" of discrimination

- fairhousing@usdoj.gov
 - 800-896-7743 (voice); 202-305-1882 (TTY)
-



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Recent DOJ Enforcement Actions

- The Department filed *United States v. Wren* in the Northern District of Illinois, alleging that the owner and property manager of a two-unit building in Chicago violated the Fair Housing Act on the basis of disability and/or familial status by refusing to rent to a woman because she was HIV+ and/or because she had a minor child. The defendant also engaged in a pattern or practice of similar discrimination based on familial status.
-



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Recent DOJ Enforcement Actions

- The court found in favor of the United States, holding that the owner violated the Fair Housing Act when she asked the woman the nature of her disability, voiced disapproval of her HIV, and refused to rent to her because she has HIV. The court also awarded the woman \$10,000 in damages.
-



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Equal Credit Opportunity Act (ECOA)

- Prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age, **receipt of public assistance**, and because a person has exercised rights under the Consumer Credit Protection Act
 - Covers any type of credit transaction, including mortgages, auto loans, and unsecured consumer loans
 - To file an individual lending discrimination complaint, contact the Consumer Financial Protection Bureau (CFPB)
 - www.consumerfinance.gov/fair-lending
 - **855-411-2372 (voice); 855-729-2372 (TTY)**
-



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Recent DOJ enforcement actions

- ✓ Gomez v. Quicken Loans (C.D. Cal.)
 - Lawsuit alleges that Quicken Loans improperly required loan applicants with disabilities—including the plaintiff, who has HIV/AIDS—to provide medical information about their disabilities as a condition of receiving a mortgage.
 - In 2015, DOJ filed a Statement of Interest in the Ninth Circuit arguing that the district court erred in dismissing the plaintiff's FHA (disability) and ECOA (receipt of public assistance) claims.

For more information, visit: <http://www.justice.gov/crt/about/hce/caselist.php>



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202-616-2110

Disability Rights Section
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1-800-514-0301 (voice)

1-800-514-0383 (TTY)

www.ada.gov/HIV
