

“KNOW YOUR RIGHTS”
Training on the Legal Rights and Responsibilities of
People with Alcohol and Drug Problems

Alaska Laws Regarding Discrimination
(May 2007)

I. The Basics

Q1. Does Alaska have a State law, like the Federal laws discussed in the *Know Your Rights* brochure, that protects people from discrimination because they have a history of alcohol or drug problems, or are in treatment or in recovery from these problems?

A1. Yes, the state’s anti-discrimination law is the Alaska Human Rights Law which is substantially similar to the federal laws. AK ST § 18.80.200.

The **Alaska Human Rights Commission** is the agency charged with enforcing the Alaska Human Rights Law. The Commission consists of seven persons appointed by the Governor and confirmed by the Legislature. The Commission employs a staff and maintains an office in Anchorage. The Commission has statewide powers and accepts complaints from all regions of the state.

AK ST § 18.80.200 Purpose

It is determined and declared as a matter of legislative finding that discrimination against an inhabitant of the state because of ... physical or mental disability...is a matter of public concern and that this discrimination not only threatens the rights and privileges of the inhabitants of the state but also menaces the institutions of the state and threatens peace, order, health, safety, and general welfare of the state and its inhabitants. Therefore, it is the policy of the state and the purpose of this chapter to eliminate and prevent discrimination... It is also the policy of the state to encourage and enable physically and mentally disabled persons to participate fully in the social and economic life of the state.

AK ST § 18.80.300 Definitions

“Physical or mental disability” means (A) a physical or mental impairment that substantially limits one or more major life activities; (B) a history of, or a misclassification as having a mental or physical impairment that substantially limits one or more major life activities.

Q2. Are people with **alcohol or drug problems** considered individuals with a “disability” protected from discrimination under Alaska laws?

A2. Yes, while Alaska law does not specifically include persons with drug or alcohol problems, the language of the Alaska Human Rights Law is similar to federal law. Additionally, a 1998 case by the Supreme Court of Alaska determined that the Alaska Human Rights Law should be interpreted in a similar fashion to the federal Rehab Act and the ADA, both of which protect people with drug or alcohol problems. Moody-Herrera v. State, Dep't of Natural Resources, 967 P.2d 79 (Alaska 1998). Finally, the Alaska Human Rights Commission, the agency charged with enforcing the anti-discrimination law, interprets state law to include persons with drug or alcohol problems. AK ST § 18.80.300.

Q3. Do Alaska laws define “**disability**” the same way as the Federal non-discrimination laws?

A3. Yes. The definition of the term disability mirrors that found in the federal ADA law. AK ST § 18.80.300.

II. Alaska Human Rights Law

Q4. In what areas of life does Alaska’s anti-discrimination law protect individuals from discrimination because of their disability?

A4. Alaska’s anti-discrimination law extends to:

- Employment
- Credit and financing practices
- Places of public accommodation
- Real property transactions

Employment Alaska Human Rights Law AK ST § 18.80.220

Q5. Who does the Alaska Human Rights Law protect from disability-based employment discrimination?

A5. The Alaska Human Rights Law makes it illegal for an employer to refuse employment to a person, or to bar a person from employment, or to discriminate against a person in compensation or in a term, condition, or privilege of employment because of the person's ... physical or mental disability. AK ST § 18.80.220.

Q6. What employers are covered by the Alaska Human Rights Law?

- A6.** Under the Alaska Human Rights Law, “employer” means a person, including the state and a political subdivision of the state, who has one or more employees in the state but does not include a club that is exclusively social, or a fraternal, charitable, educational, or religious association or corporation, if the club, association, or corporation is not organized for private profit. AK ST § 18.80.300.
- Q7.** Are all employees covered by the Alaska Human Rights Law?
- A7.** Virtually all employees are covered. Under the Alaska Human Rights Law, “employee” means an individual employed by an employer but does not include an individual employed in the domestic service of any person. AK ST § 18.80.300.
- Q8.** Are the employment discrimination provisions like those of the Federal laws explained in *Know Your Rights*?
- A8.** Yes, in most respects, the Alaska Human Rights Law adopts the same standards and follows the same basic rules that the Rehabilitation Act and the ADA establish:
- Definition of what constitutes unlawfully discriminatory employment policies and practices, in regard to hiring, firing, and the terms and conditions of employment
 - Reasonable accommodation requirements
- Q9.** What types of reasonable accommodations should an employer expect to make for a person in treatment or otherwise in recovery from an alcohol or drug problem?
- A9.** Similar to the Federal laws, the Alaska Human Rights Law requires employers to encourage and enable physically and mentally disabled persons to participate fully in the social and economic life of the state (including employment).
- Q10.** Can employers make inquiries about an applicant’s criminal history?
- A10.** Yes, employers may make inquiries about an applicant’s criminal history. AK ST § 12.62.400.

Employment-related Medical Inquiries and Examinations

- Q11.** Are Alaska’s laws regarding medical inquiries, examinations and drug and alcohol tests similar to those of the Federal laws explained in the *Know Your Rights* brochure?
- A11.** Yes. They can be found in the Labor and Worker’s Compensation laws rather than the anti-discrimination statutes.

Drug and Alcohol Testing – Current drug use is not protected, while persons who are no longer using illegal drugs and are engaged in or have completed a drug rehabilitation program are theoretically protected as disabled persons. An employer may only carry out testing of use of drugs or alcohol after adopting a written policy for the testing and

retesting and informing employees of the policy. The employer shall inform prospective employees that they must undergo drug testing. AK ST § 23.10.620.

Impermissible Medical Inquiries – Employers may not conduct medical examinations, or conduct medical inquiries, of job applicants until a conditional offer of employment has been given to the job applicant. AK ST § 23.30.022.

Permissible Medical Inquiries – Once an offer of employment is made, employers may condition the commencement of employment on the results of a medical examination. AK ST § 23.30.022.

Housing
Alaska Human Rights Law
AK ST § 18.80.240

Q12. Does Alaska protect people in treatment or otherwise in recovery from alcohol or drug problems from housing discrimination?

A12. Yes. The Alaska Human Rights law treats drug and alcohol problems as disabilities.

Additionally, the Alaska Human Rights Law:

- Makes it unlawful for an owner, lessee, manager or other person having the right to sell, lease, or rent real property to refuse to sell, lease or rent the real property to a person because of disability. AK ST § 18.80.240(1).
- Makes it unlawful to discriminate against a person because of a disability in a term, condition or privilege relating to the use, sale, lease, or rental of real property. AK ST § 18.80.240(2).
- Makes it unlawful to make a written or oral inquiry or record of the disability of a person seeking to buy, lease, or rent real property. AK ST § 18.80.240(3).
- Makes it unlawful to offer, solicit, accept, use or retain a listing of real property with the understanding that a person may be discriminated against in a real estate transaction or in the furnishing of facilities or sources in connection therewith because of a person's disability. AK ST § 18.80.240(4).
- Makes it unlawful to represent to a person that real property is not available for inspection, sale, rental, or lease when in fact it is so available, or to refuse to allow a person to inspect real property because of the disability of that person. AK ST § 18.80.240(5).

Public Accommodations
Alaska Human Rights Law
AK ST § 18.80.230

Q13. Does Alaska’s anti-discrimination law also protect people with histories of alcohol or drug problems from discrimination in public accommodations?

A13. Yes. The Alaska Human Rights Law prohibits disability-based discrimination by owners, lessees, managers, agents or employees of places of public accommodation (such as lodgings, facilities and amusements), as well as business establishments. AK ST § 18.80.230, 18.80.300 (16).

III. Analyzing Discrimination Claims under Alaska Law

While Alaska’s anti-discrimination laws likely protect individuals from discrimination because of drug or alcohol problems, there are no reported court decisions applying Alaska’s anti-discrimination laws to individuals with alcohol or drug problems. Nevertheless, because the language of the anti-discrimination statute is substantially similar to that of the federal law, its practical application will likely have a similar effect. AK ST § 18.80.300

IV. Remedies and Resources for Addressing Illegal Discrimination

Q14. What can I do if I think I have been discriminated against because of an alcohol or drug problem?

A14. In addition to the remedies under the federal anti-discrimination laws listed at the end of the *Know Your Rights* brochure:

- A person who believes they have been discriminated against in violation of the Alaska Human Rights Law (including areas of employment, housing and public accommodation) may file a complaint with the Alaska Human Rights Commission. The Commission will investigate the complaint, and if the investigator determines that there is substantial evidence of an unlawful discriminatory practice, the investigator will try to remedy the discrimination through conference, conciliation or persuasion. AK ST § 18.80.100 et. seq.
- A complainant may also initiate an action in an appropriate court or file a new complaint with the Commission asking it to resolve the grounds for a previous dismissal. AK ST § 18.80.112.

Remember: Employment discrimination claims under Federal law:

- If you intend to file an employment discrimination lawsuit under the ADA or Rehabilitation Act, you must first file a complaint with the U.S. Equal Employment

Opportunity Commission within 180 days of the alleged discrimination. The 180-day deadline may be extended to 300 days if the charge is also covered by a state or local anti-discrimination law.

- The Seattle Field Office of the U.S. EEOC has jurisdiction over the state of Alaska and is located at the Federal Office Building, 909 First Avenue, Suite 400, Seattle, WA 98104-1061, tel. (800)-669-4000, and is open Monday – Friday from 8:00am to 4:30p.m. You can only file a lawsuit after receiving a “right to sue” letter from the EEOC. You may wish to check the EEOC website, www.eeoc.gov, for more information.

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