

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

Indiana Laws Regarding Discrimination
(April 2007)

I. The Basics

- Q1.** Does Indiana 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 laws are substantially similar to the federal laws. The **Indiana Civil Rights Law** is comprised of the Indiana Code Title 22, Article 9 (IC 22-9) and the Indiana Administrative Code, Title 910, Articles 1-3 (910 IAC).

The **Indiana Civil Rights Commission** is the agency charged with enforcing the Indiana Civil Rights Law. The Commission’s office is located in Indianapolis. The Commission has statewide powers and accepts complaints from all regions of the state. The Commission enforces the Indiana Civil Rights Law.

IC 22-9-1-2 Public Policy

It is the public policy of the state to provide all of its citizens equal opportunity for education, employment, access to public conveniences and accommodations, and acquisition through purchase or rental of real property, including but not limited to housing, and to eliminate segregation or separation based solely on race, religion, color, sex, disability, national origin or ancestry, since such segregation is an impediment to equal opportunity. Equal education and employment opportunities and equal access to and use of public accommodations and equal opportunity for acquisition of real property are hereby declared to be civil rights.

The practice of denying these rights to properly qualified persons by reason of the race, religion, color, sex, disability, national origin, or ancestry of such person is contrary to the principles of freedom and equality of opportunity and is a burden to the objectives of the public policy of this state and shall be considered as discriminatory practices. The promotion of equal opportunity without regard to race, religion, color, sex, disability, national origin, or ancestry through reasonable methods is the purpose of this chapter.

It is also the public policy of this state to protect employers, labor organizations, employment agencies, property owners, real estate brokers, builders, and lending institutions from unfounded charges of discrimination.

It is hereby declared to be contrary to the public policy of the state and an unlawful practice for any person, for profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, religion, color, sex, disability, national origin, or ancestry.

This chapter shall be construed broadly to effectuate its purpose.

IC 22-9-5-6 Definitions

As used in this chapter, "disability" means with respect to an individual:

- (1) a physical or mental impairment that substantially limits at least one of the major life activities of the individual;
- (2) a record of an impairment; or
- (3) being regarded as having an impairment.

As used in this subsection, "illegal use of drugs" means the use of drugs the possession or distribution of which is unlawful under the Controlled Substances Act. The term does not include the use of a drug taken under the supervision of a licensed health care professional or another use authorized by the Controlled Substances Act or other provisions of federal law. For purposes of this chapter, an individual shall not be considered disabled solely because the individual is currently engaging in the illegal use of drugs. However, this subsection does not exclude as an individual with a disability an individual who:

- (1) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs or has otherwise been rehabilitated successfully and is no longer engaging in the illegal use of drugs;
- (2) is participating in a supervised rehabilitation program and is no longer engaging in the illegal use of drugs; or
- (3) is erroneously regarded as engaging in the illegal use of drugs but is not engaging in the illegal use of drugs.

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

A2. **Yes**, with caveats. A person currently engaged in illegal drug use is not protected. However, a person 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 the person is otherwise entitled to those services. **IC 22-9-5-6(b)**. In addition, a person who:

- has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs or has otherwise been rehabilitated successfully and is no longer engaging in the illegal use of drugs;
- is participating in a supervised rehabilitation program and is no longer engaging in the illegal use of drugs; or
- is erroneously regarded as engaging in the illegal use of drugs but is not engaging in the illegal use of drugs . . .

is protected. **IC 22-9-5-6(b)**.

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

A3. **Yes**. Indiana’s definition of the term “disability” is very similar to that found in the federal ADA law. IC 22-9-1-3; IC 22- 9-5-6.

II. Indiana Civil Rights Law

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

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

- Employment
- Access to public conveniences and accommodations
- Acquisition through purchase or rental of real property

**A. Employment
Indiana Civil Rights Law**

C 22-9-5-1 *et seq.*: Employment Discrimination Against Disabled Persons

910 IAC 3-1-1 *et seq.*: Entitled Employment Discrimination Against Disabled Persons

- Q5.** Who does the Indiana Civil Rights Law protect from disability-based employment discrimination?
- A5.** The Indiana Civil Rights Law requires employers, employment agencies, labor organizations and joint labor-management committees to provide equal employment opportunities for qualified individuals with disabilities. 910 IAC 3-1-1; 910 IAC 3-1-2; IC 22-9-5-4.
- Q6.** What employers are covered by the Indiana Civil Rights Law?
- A6.** Under the Indiana Civil Rights Law, “employer” means a person engaged in an industry affecting commerce that has at least fifteen (15) employees for each working day in each of at least twenty (20) calendar weeks in the current or preceding year and an agent of such a person. “Employer” does not include the United States, a corporation wholly owned by the government of the United States, an Indian tribe, or a bona fide private membership club other than a labor organization that is exempt from taxation under the Internal Revenue Code. IC 22-9-5-10.
- Q7.** Are all employees covered by the Indiana Civil Rights Law?
- A7.** Virtually all employees are covered. Under the Indiana Civil Rights Law, “employee” means an individual employed by an employer. IC 22-9-5-9.
- Q8.** Are the employment discrimination provisions like those of the Federal laws explained in *Know Your Rights*?
- A8.** Yes, the Indiana Civil 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
 - Fair housing

The Indiana Civil Rights Law goes further than the Federal laws and makes it unlawful for an employer to discriminate in job recruitment; advertising; application procedures; hiring; upgrading; promoting; awarding tenure; demoting; transferring; laying off; terminating; providing a right to return from lay off; rehiring; pay and compensation;

assignments; seniority; leave; fringe benefits; and other job related functions. 910 IAC 3-3-1.

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 Indiana Civil Rights Law requires employers to make reasonable accommodations for individuals with disabilities, and makes it unlawful for an employer not to make reasonable accommodations unless the accommodation would impose an undue hardship on the operation of business. 910 IAC 3-3-6. Indiana Civil Rights Laws are even more protective of individuals with disabilities when it comes to the definition of “reasonable accommodation.”

IC 22-9-5-17

As used in this chapter, "reasonable accommodation" includes the following:

- (1) Making existing facilities used by employees readily accessible to and usable by individuals with disabilities.
- (2) Job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modification of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities.

910 IAC 3-2-14

(a) “Reasonable Accommodation” means modification or adjustments:

- (1) to a job application process that enable a qualified applicant with a disability to be considered for the position such qualified applicant desires;
- (2) to the work environment, or to the manner or circumstances under which the position held or desired is customarily performed, that enable a qualified individual with a disability to perform the essential functions of that position; or
- (3) that enable a covered entity’s employee with a disability to enjoy equal benefits and privileges of employment as are enjoyed by other similarly situated employees without disabilities.

(b) The term may include, but is not limited to, the following:

- (1) Making existing facilities used by employees readily accessible to and usable by individuals with disabilities.
- (2) Job restructuring.

- (3) Part-time or modified work schedules.
- (4) Reassignment to a vacant position.
- (5) Acquisition or modifications of equipment or devices.
- (6) Appropriate adjustment or modifications of examinations, training materials, or policies.
- (7) The provision of qualified readers or interpreters.
- (8) Other similar accommodations for individuals with disabilities.

(c) To determine the appropriate reasonable accommodation, it may be necessary for the covered entity to initiate an informal, interactive process with the qualified individual with a disability in need of the accommodation. This process should identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations.

910 IAC 3-2-16

An employer need not incur undue hardship in providing for reasonable accommodations for a disabled individual.

Q10. Can employers make inquiries about an applicant’s criminal history?

A10. Employers may make limited criminal history checks only on request of the individual seeking employment. “Limited criminal history” is defined as the disposition of any arrest or criminal charge.

Employment-related Medical Inquiries and Examinations

Q11. Are Indiana’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.

Impermissible Medical Inquiries and Examinations – A covered entity may not conduct a medical examination or make inquiries of a job applicant as to whether the applicant is an individual with a disability or as to the nature or severity of the disability. IC 22-9-5-20; 910 IAC 3-3-10.

Permissible Medical Inquiries – A covered entity may make preemployment inquiries into the availability of an applicant to perform job related functions. The inquiry or examination must be shown to be job related and consistent with business necessity. IC 22-9-5-20; 910 IAC 3-3-11.

Permissible Medical Examinations – A covered entity may require a medical examination after an offer of employment has been made to a job applicant and before the commencement of the employment duties of the applicant, and may condition an offer of employment on the results if all entering employees are subject to the examination regardless of disability, and if the information obtained regarding the medical condition or history of the applicant is treated as a confidential medical record, except that individuals, such as supervisors, first aid and safety personnel shall need to accommodate the employee and government officials investigating compliance shall need. IC 22-9-5-20; 910 IAC 3-3-11.

Impermissible Drug and Alcohol Testing –The term “illegal drug use” does not include the use of a drug taken under the supervision of a licensed health care professional or another use authorized by the Controlled Substances Act (21 U.S.C. 812) or other provisions of federal law. IC 22-9-5-6; 910 IAC 3-2-4.

Permissible Drug and Alcohol Testing – Indiana does not consider current illegal drug use a disability, and therefore, it is not a violation for an employer or other covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual is no longer engaging in the illegal use of drugs. IC 22-9-5-6. Additionally, a test to determine the illegal use of drugs shall not be considered a medical examination. IC 22-9-5-24(b); 910 IAC 3-2-4; 910 IAC 3-3-15.

B. Housing

Indiana Civil Rights Law

IC 22-9-6 Equal Access to Housing for Persons with Disabilities;

IC 22-9.5 Indiana Fair Housing;

910 IAC Article 2 Fair Housing Complaints

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

A12. Yes. While the Indiana Civil Rights law does not protect *current* illegal drug users from housing discrimination, the law expressly includes drug addiction (other than addiction caused by current illegal use of controlled substances) and alcoholism in the definition of individuals protected from housing discrimination. 910 IAC 2-3-2.

Additionally, the Indiana Civil Rights Law makes it unlawful to:

- refuse to sell or rent a dwelling after a bona fide offer has been made;
- refuse to negotiate;
- discriminate in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities;
- engage in any conduct relating to the provision of housing which otherwise makes unavailable or denies dwellings;

- make, print, or publish a statement or advertisement with respect to the sale or rental of a dwelling that indicates preference;
- represent to any person that a dwelling is not available for sale or rental when such dwelling is in fact available;
- engage in blockbusting practices; or
- deny access to a real estate association

... on account of an individual’s disability, including alcoholism and past drug addiction. 910 IAC 2-2-1; 910 IAC 2-3-2.

**C. Public Accommodations
Indiana Civil Rights Law
IC 22-9 Civil Rights Enforcement**

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

A13. Yes. It is the public policy of the state to provide all of its citizens equal access to public conveniences and accommodations. IC 22-9-1-2. The Indiana Civil Rights Law defines “public accommodation” as any establishment that caters or offers its services or facilities or goods to the general public. IC 22-9-1-3. The practice of denying these rights is contrary to the principles of freedom and equality of opportunity and is a burden to the objectives of the public policy of this state and shall be considered as discriminatory practices. IC 22-9-1-2.

III. Analyzing Discrimination Claims under Indiana Law

While Indiana’s anti-discrimination laws protect individuals from discrimination because of drug or alcohol problems, there are few reported court decisions applying Indiana’s anti-discrimination laws to such individuals. In one decision, the Indiana Court of Appeals ruled that an attorney recovering from alcoholism was considered “disabled” under the Civil Rights Law. *See Indiana Civ. Rts. Comm. v. Kitlinger & Gray*, 567 N.E.2d 125 (Ind. Ct. App. 5th Dist. 1991). However, even in the absence of many decisions on the topic, the language of the anti-discrimination statute makes it clear that individuals with drug or alcohol abuse histories are protected. Further, the Indiana Civil Rights Commission makes it clear that Indiana Civil Rights Law was amended to comply with federal law in all substantive areas.

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 Indiana Civil Rights Law (including areas of employment, housing and public accommodation) may file a written complaint by personal delivery, mail, fax or internet with the Indiana Civil Rights Commission.
- The complaint shall be filed within one hundred eighty (180) days of the discriminatory act for non-housing related discrimination, and one year for housing related discrimination.
- The Commission will investigate the complaint by collecting and summarizing the evidence. Parties may be asked to supply documents that support their position. The Commission may contact the parties to attempt to discuss the issues and settle the case.
- While a lawyer is welcome to participate in the investigation, a lawyer is not required.
- At any time during the investigation, the Commission's Alternative Dispute Resolution Team can attempt to resolve the dispute through mediation. If no settlement is reached, the facts and recommendations are presented to the executive director who reviews the material and makes a determination whether there is probable cause to believe that an illegal act of discrimination occurred.
- The complainant has fifteen (15) days to ask for reconsideration of a no probable cause finding. If probable cause is found, a formal attempt to resolve the case will be made.
- If settlement is achieved, a written Consent Agreement is issued for signatures by all parties. The agreement is then submitted to the Commission for consideration. When approved, a Consent Agreement has the same effect as a Final Order.
- If settlement fails, the case is tried at a public hearing. A Commission staff attorney may present the Complainant's claim. The burden of proof is on the Complainant. An Administrative Law Judge presides at the public hearing. Proposed findings are issued by the Judge and submitted to the ICRC. Either party has fifteen (15) days to file objections to the recommended findings. An Oral Argument on objections may be held before the full Commission.
- A Final Order by the Commission is binding. Either party may seek judicial review. If the Commission finds discrimination, a Final Order may include a cease and desist order and require further affirmative action that will eliminate discrimination. This might include reinstatement to a job, monetary relief where evidence showed that there was some resulting loss, making a house or apartment available and/or validating selection devices. Reasonable attorneys' fees and costs may be awarded to the prevailing party in housing cases. (<http://www.in.gov/icrc/law/leghist2.html>).
- The Indiana Human Rights Commission is located at 100 N. Senate Avenue, Room N103, Indianapolis, Indiana 46204. The telephone number is (317) 232-2600 or 1-800-628-2909. The fax number is (317) 232-6580. The web site is <http://www.IN.gov/icrc/>. The email address is icrc@crc.in.gov.

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 (“EEOC”) 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 Indianapolis Field Office of the U.S. EEOC has jurisdiction over the state of Indiana and is located at the Federal Office Building, 101 West Ohio Street, Suite 1900, Indianapolis, IN, 46204, tel. (800)-669-4000, and is open Monday – Friday from 8:00am to 4:30pm. 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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