

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

**New Mexico Laws Regarding Discrimination
(July 2007)**

I. The Basics

Q1. Does New Mexico have State laws, like the Federal laws in the *Know Your Rights* brochure, that protect people from discrimination who have a history of alcohol or drug problems, or are in treatment or recovery from the problem?

A1. Yes. The New Mexico Human Rights Act (NMHRA) prohibits discrimination against individuals on the basis of physical or mental handicap.

The New Mexico Human Rights Commission is the agency within the New Mexico Department of Labor’s Human Rights Division charged with enforcing NMHRA pertaining to employment, housing, and public accommodations. The Human Rights Commission receives and investigates discrimination complaints, supports educational programs to eliminate prejudice, issues publications and releases results of research which tend to prevent or eliminate discrimination. N.M. Stat. Ann. § 28-1-4.

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

A2. Yes. According to an official at the New Mexico Human Rights Division, though NMHRA does not explicitly state that individuals with alcohol or drug problems are protected from discrimination, the New Mexico Human Rights Division follows the ADA in protecting chronic alcoholics and individuals with a history of illegal drug abuse from discrimination.

While the NMHRD’s position is that the NMHRA protects alcoholics and those with a history of substance abuse, there are no reported court decisions directly applying New Mexico’s anti-discrimination laws to individuals with alcohol or drug problems.

Q3. Do New Mexico’s laws define “**disability**” the same way as the Federal non-discrimination laws?

A3. Yes. NMHRA uses the term “handicap” in place of “disability,” but uses the term in the same way as the Federal non-discrimination laws.

- The definition of handicap includes both physical and mental disabilities.
 - “Physical or mental handicap” under NMHRA includes any “physical or mental impairment that substantially limits one or more of a person’s major life activities.” N.M. Stat. Ann. § 28-1-2(M) (2007).
- An individual is also considered to be mentally or physically handicapped if he or she:
 - Has a record of a physical or mental handicap; or
 - Is regarded as having a physical or mental handicap.

II. New Mexico Anti-Discrimination Law

Q4. In what areas of life does NMHRA protect individuals from discrimination because of their disability?

A4. NMHRA extends to:

- Employment
- Housing
- Public Accommodation

Employment New Mexico Human Rights Act N.M. Stat. Ann. § 28-1-7

Q5. Who is protected from disability-based employment discrimination?

A5. The NMHRA makes it illegal for an employer to refuse to hire, to discharge, to promote, demote, or to discriminate in matters of compensation, terms, conditions, or privileges of employment against any person otherwise qualified because of physical or mental handicap or serious medical condition. N.M. Stat. Ann. § 28-1-7(A) (2007).

Q6. What employers are covered?

A6. “Employer” is defined as any person employing four or more persons and any person acting for an employer, including but not limited to, employment agencies. N.M. Stat. Ann. § 28-1-2(B) (2007), N.M. Code R. § 9.1.1.7(M) (2007).

Q7. Are all employees covered by the New Mexico Human Rights Act?

- A7.** Yes, all employees are covered by NMHRA.
- Q8.** Are the employment discrimination provisions like those of the Federal laws explained in *Know Your Rights*?
- A8.** Yes, in most respects, the NMHRA 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.** Like the Federal laws, the NMHRA requires employers to make reasonable accommodations for employees with disabilities. N.M. Stat. Ann. § 28-1-7(J) (2007). Reasonable accommodations are defined to mean such modifications or adaptations of the work environment or job responsibilities of a handicapped person as are necessary to enable him or her to perform the essential functions of the job in questions and which do not impose an undue hardship on the employer. N.M. Code R. § 9.1.1.7(DD) (2007). The regulations do not provide examples of what types of accommodations are deemed reasonable. Neither are there any court decisions applying the “reasonable accommodation” provisions to individuals with alcohol or drug problems.
- Q10.** May employers make inquiries about an applicant’s criminal history?
- A10.** Yes, employers may make inquiries about an applicant’s criminal history. However, records of arrest that did not result in conviction and records of misdemeanor convictions not involving moral turpitude may not be used or distributed in connection to applications for public employment or license or other authority to practice the trade, business or profession. N.M. Stat. Ann. § 28-2-3(B) (2007). This provision does not apply to applicants for employment with law enforcement agencies.

Employment-related Medical Inquiries and Examination

- Q11.** Are NMHRA’s employment provisions regarding medical inquiries, examinations, and drug and alcohol tests similar to those of the Federal laws explained in the *Know Your Rights* brochure?
- A11.** New Mexico law does not include provisions related to medical inquiries, examinations, and drug and alcohol tests.

Housing
New Mexico Human Rights Act
N.M. Stat. Ann. § 28-1-7

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

A12. Yes. The NMHRA protections are very similar to those of the federal Fair Housing Act described in the *Know Your Rights* brochure.

The NMHRA makes it unlawful:

- For a person to refuse to sell, rent, assign, lease, or sublease any housing accommodation because of a physical or mental handicap, provided that the handicap is unrelated to the person's ability to acquire or rent and maintain the housing accommodation. N.M. Stat. Ann. § 28-1-7(G)(1) (2007).
 - "Housing accommodation" means any building or portion of a building that is constructed or is to be constructed, which is used or intended for use as the residence or sleeping place of any individual. N.M. Stat. Ann. § 28-1-2(I) (2007).
- For a person to discriminate in the terms, conditions, or privileges of the sale, rental, lease, assignment, or sublease of any housing accommodation because of a physical or mental handicap, provided that the handicap is unrelated to the person's ability to acquire or rent and maintain the housing accommodation. N.M. Stat. Ann. § 28-1-7(G)(2) (2007).
- For a person to indicate any preference, limitation, or discrimination based on handicap in their advertisement of the sale or rental of a housing accommodation. N.M. Stat. Ann. § 28-1-7(G)(3) (2007).
- For any person or financial institution that provides financial assistance for the acquisition, construction, rehabilitation, repair, or maintenance of any housing accommodation to discriminate against a person because of handicap or to make any inquiry concerning the disability of any applicant for financial assistance. N.M. Stat. Ann. § 28-1-7(H)(1), (2) (2007).
- For a person to aid, abet, incite, compel, or coerce any of the unlawful acts prohibited in this section of the NMHRA. N.M. Stat. Ann. § 28-1-7(I) (2007).

Public Accommodations
New Mexico Human Rights Act
N.M. Stat. Ann. § 28-1-7

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

A13. Yes. NMHRA prohibits any person in any public accommodation from making a distinction in offering or refusing to offer its services, facilities, accommodations, or goods to any person because of physical or mental handicap. N.M. Stat. Ann. § 28-1-7(F) (2007).

III. 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, you may:

- File a complaint charging a violation of NMHRA with the Human Rights Division. Complaints must be filed with the Division within 300 days after the last alleged act of unlawful discrimination was committed. N.M. Stat. Ann. § 28-1-10(A) (2007).
 - Complaints may be filed in person at 1596 Pacheco Street, Aspen Plaza, Suite 103, Santa Fe, New Mexico; or, by telephone at (505) 827-6838. or by statewide toll-free number at 1-800-566-9471.
- After a complainant files a complaint with the Human Rights Division, if the director of the Division determines that probable cause exists for the complaint, she will invite the parties to engage in mediation or conciliation.
 - If a settlement agreement is signed, the director will not issue a determination and will dismiss the complaint. N.M. Stat. Ann. § 28-1-10(C) (2007).
 - If the parties do not reach a settlement agreement, the director will issue a written complaint in the name of the Division against the respondent, setting forth the alleged discriminatory practice and requiring the respondent to answer the allegations at a hearing before the commission in the county where the respondent does business or where the alleged discriminatory practice occurred. N.M. Stat. Ann. § 28-1-10(F) (2007).

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 Phoenix District Office of the EEOC has jurisdiction over New Mexico and is located at 3300 North Central Avenue, Suite 690, Phoenix, Arizona 85012-2304, phone: 1-800-699-4000, and is open Monday – Friday from 8:00 am to 4:30 pm. 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.