



HIV/AIDS AND THE LAW



WHAT LAWS PROTECT AN INDIVIDUAL WHO HAS HIV/AIDS?

- **Americans with Disabilities Act (ADA):** The ADA protects against discrimination in employment (when the employer is a private employer with 15 or more employees), public accommodations, and state and local governments.
- **Health Insurance Portability and Accountability Act (HIPAA):** HIPAA is designed to protect the privacy of patients' medical records and other health information. HIPAA also provides patients with access to their medical records and with significant control over how their personal information is used and disclosed.
- **Family Medical Leave Act (FMLA):** FMLA applies to private-sector employers with 50 or more employees within 75 miles of the work site. Eligible employees may take leave for serious medical conditions or to provide care for an immediate family member with a serious medical condition including HIV/AIDS. Eligible employees are entitled to a total of 12 weeks of job-protected unpaid leave during a 12-month period.
- **Fair Housing Act (FHA):** The FHA prohibits housing discrimination against individuals with disabilities, including individuals with HIV/AIDS.
- **Air Carrier Access Act (ACAA):** The ACAA prohibits discrimination against individuals with HIV/AIDS by air carriers in contexts other than employment.
- **Colorado Revised Statutes §§ 25-4-1401, et seq.:** Colorado law requires that both laboratories and physicians report diagnoses of HIV and AIDS within seven days to the Colorado Department of Public Health and Environment. There are limitations as to when this information may be released set out in the statutes.

WHO IS PROTECTED BY THE ADA?

- Individuals with HIV/AIDS (even asymptomatic) have a physical impairment that substantially limits one or more major life activities or bodily functions and are therefore protected by the ADA
- Individuals who are discriminated against because they are *regarded* as having HIV/AIDS are also protected by the ADA even if they do not in fact have HIV/AIDS
- Individuals who are discriminated against because they have a known association or relationship with an individual who has HIV/AIDS are also protected by the ADA

HOW DOES THE ADA APPLY FOR INDIVIDUALS WITH HIV/AIDS IN THE EMPLOYMENT CONTEXT?

- HIV/AIDS is considered a disability, so employers may not discriminate on the basis of HIV/AIDS.
- An employer may consider health and safety when deciding whether to hire an applicant or retain an employee who has HIV/AIDS, but only under limited circumstances.
 - Employers may establish qualification standards that will exclude individuals who pose a **direct threat** – e.g., a significant risk of substantial harm – to the health or safety of the individual or the

safety of others, if that risk cannot be eliminated or reduced below the level of a direct threat by reasonable accommodation

- Employers may not simply assume that a threat exists; they must establish it through objective, medically supportable methods that there is a significant risk that substantial harm could occur in the workplace
- Transmission of HIV will rarely be considered a legitimate “direct threat”
- Employers must conduct an individual assessment based on the direct threat analysis— any blanket exclusion would violate the ADA as a matter of law
- An employer does not have an unfettered right to inquire into an applicant or employee’s HIV/AIDS status
 - Applications cannot seek information about health status or ask disability related questions
 - Employers *may not* ask a job applicant a disability related question
 - Employers *may not* ask an applicant to submit to a medical exam before an offer is made
 - Employers *may* ask questions about the applicant’s ability to perform specific job functions
 - Employers *may* condition a job offer on the satisfactory outcome of a post-offer medical exam, but only if this exam is required of all entering employees in the same job category; however, if the employer withdraws a job offer because the post-offer medical exam reveals a disability, the reason must be job-related and consistent with business necessity
- Employers must keep medical information, including HIV/AIDS status, confidential; medical information must be kept separate from general personnel files
- Employers may not discriminate against someone with HIV/AIDS in the provision of health insurance

CAN A PUBLIC ACCOMMODATION EXCLUDE A PERSON WITH HIV OR AIDS BECAUSE THAT PERSON ALLEGEDLY POSES A DIRECT THREAT TO THE HEALTH & SAFETY OF OTHERS?

- Individuals with HIV/AIDS will rarely, if ever, pose a direct threat in the context of public accommodations
- Public accommodation providers must conduct an individual assessment that is based on reasonable judgment that relies on current medical evidence

WHAT IS HUD AND WHAT DOES IT HAVE TO DO WITH HIV/AIDS?

- HUD is the U. S. Department of Housing and Urban Development
- HUD is responsible for enforcing the Fair Housing Act (FHA), which protects against discrimination on the basis of disability, including HIV/AIDS
- HUD also manages the Housing Opportunities for Persons with AIDS (HOPWA) program, which is the only federal program dedicated to addressing the housing-related needs of individuals living with HIV/AIDS and their families

WHERE CAN I FILE A COMPLAINT IF I BELIEVE MY RIGHTS HAVE BEEN VIOLATED?

- Employment: <http://www.eeoc.gov/employees/charge.cfm> or www.dora.state.co.us/civil-rights/complaints_process.html
- Housing: <http://www.hud.gov/complaints/> or www.dora.state.co.us/civil-rights/complaints_process.html
- Public accommodations and state or local government: http://www.ada.gov/aids/ada_aids_complaints.htm or www.dora.state.co.us/civil-rights/complaints_process.html

*The Legal Center for People with Disabilities also has the following fact sheets available:
Overview of the ADA, FMLA, Housing Discrimination, and Employment Discrimination*

***** DISCLAIMER: This is not intended as legal advice, but rather for informational purposes only. Always consult a lawyer if you have questions about your legal rights. *****

References:

Disability Law Colorado – www.disabilitylawco.org
Dept. of Justice Information on the ADA – www.ada.gov
Equal Employment Opportunity Commission – www.eeoc.gov
The Department of Housing and Urban Development – www.hud.gov
AIDS.gov – www.aids.gov
Colorado Department of Public Health and Environment – www.colorado.gov