



Connecticut

Overview of Legal Issues
For People with HIV

November 2011

ABOUT GLAD'S AIDS LAW PROJECT

Gay & Lesbian Advocates & Defenders (GLAD) is New England's leading legal rights organization dedicated to ending discrimination based on sexual orientation, HIV status, and gender identity and expression. GLAD's AIDS Law Project was founded in 1984 to protect the rights of *all* people with HIV.

Fighting discrimination and establishing strong privacy protections have been important for people with HIV since the beginning of the epidemic. We outline here the basic Connecticut and federal laws of particular importance to people with HIV. This outline is not intended to judge or evaluate the wisdom of any particular statute. Rather, we want you to understand the current scope of HIV testing, privacy, and anti-discrimination protections -- and the exceptions to these protections. The more information you have about existing laws, the more prepared you will be to stand up for your legal rights.

If you have questions about any of these laws, or believe that your legal rights have been violated, we want to hear from you. Call our toll-free Legal InfoLine (1-800-455-GLAD) Monday through Friday from 1:30 p.m. to 4:30 p.m.

Contents

■ CONNECTICUT ANTI-DISCRIMINATION LAW	1
Discrimination Based on HIV Status	1
Employment	1
<i>Adverse Treatment</i>	1
<i>Reasonable Accommodation</i>	3
<i>Employer Health Inquiries</i>	5
<i>Health Care Workers</i>	6
<i>Assessing Discrimination</i>	7
Public Accommodation	9
Housing	14
Credit	15
Remedies for Discrimination	15
<i>Connecticut Law</i>	15
<i>Federal Law</i>	20
■ HIV TESTING & PRIVACY	22
HIV Testing	22
<i>Consent</i>	22
<i>Post-test Counseling Requirements</i>	22
<i>Consent of Minors</i>	23
<i>HIV Testing without Consent</i>	23
<i>HIV Testing and Insurers</i>	26
<i>HIV Testing of Pregnant Women and Newborns</i>	27
<i>AIDS Vaccine Researchers</i>	28
Privacy	29
<i>Confidentiality of HIV Test Results</i>	29
<i>Exception to the HIV Privacy Statute</i>	30
<i>Remedies</i>	31
<i>State HIV Reporting Requirements</i>	31
<i>Duty to Warn</i>	32
■ OTHER HIV-RELATED LAWS	35
Syringe Access	35
<i>Needle Exchange Programs</i>	35
<i>Pharmacy Access</i>	35

Connecticut Anti-Discrimination Law

■ Discrimination Based on HIV Status

Does Connecticut have laws protecting people with HIV from discrimination?

Yes, Connecticut has enacted anti-discrimination laws protecting people with HIV from discrimination in employment, housing, public accommodations and credit. In addition, there are a number of federal laws that protect people from discrimination based on their HIV status.

Who is protected under these anti-discrimination laws?

- People with AIDS or who are HIV-positive, even if they are asymptomatic and have no outward or manifest signs of illness.
- Under the ADA, but not Connecticut law, persons who are regarded or perceived as having HIV.
- Under the ADA, but not Connecticut law, a person who does not have HIV, but who “associates” with a person with HIV — such as friends, lovers, spouses, roommates, business associates, advocates, and caregivers of a person or persons with HIV.

■ Employment

ADVERSE TREATMENT

What laws protect people with HIV from discrimination in employment?

People who are HIV-positive or who have AIDS are protected from employment discrimination under both Connecticut Human Rights Law¹ and the federal Americans with Disabilities Act (ADA). Both of these

¹ Conn. Gen. Stat. sec. 46a-60

statutes prohibit discrimination in employment on the basis of a person's disability. The Connecticut law covers employers with 3 or more employees in the United States; the ADA covers employers with fifteen or more employees.

What do these anti-discrimination laws prohibit?

An employer may not take adverse action against an applicant or employee simply on the basis that the person has a disability such as HIV or AIDS. This means that an employer may not terminate, refuse to hire, rehire, or promote, or otherwise discriminate in the terms or conditions of employment, based on the fact that a person is HIV-positive or has AIDS.

The focus here is whether a person with AIDS or HIV was treated differently than other applicants or employees in similar situations.

The following are examples of unlawful discrimination:

- An employer may not refuse to hire a person with HIV based on fear that HIV will be transmitted to other employees or to customers.
- An employer may not refuse to hire or make an employment decision based on the possibility, or even probability, that a person will become sick and will not be able to do the job in the future.
- An employer cannot refuse to hire a person because it will increase health or workers' compensation insurance premiums.

REASONABLE ACCOMMODATION

What does it mean that an employer may have to provide a “reasonable accommodation” for an employee with a disability?

Persons with disabilities, such as HIV/AIDS, may experience health-related problems that make it difficult to meet some job requirements or duties. For example, a person may be exhausted or fatigued and find it difficult to work a full-time schedule.

In certain circumstances, the employer has an obligation to modify or adjust job requirements or workplace policies in order to enable a person with a disability, such as HIV or AIDS, to perform the job duties. Under the ADA and the Connecticut Fair Employment Practices Act, this is known as a “reasonable accommodation.”

Examples of reasonable accommodations include:

- Modifying or changing job tasks or responsibilities;
- Establishing a part-time or modified work schedule;
- Permitting time off during regular work hours for medical appointments;
- Reassigning an employee to a vacant job; or
- Making modifications to the physical layout of a job site or acquiring devices such as a telephone amplifier to allow, for example, a person with a hearing impairment to do the job.

There is no fixed set of accommodations that an employee may request. The nature of a requested accommodation will depend on the particular needs of an individual employee’s circumstances.

How may a person obtain a reasonable accommodation?

It is, with rare exception, the employee's responsibility to initiate the request for an accommodation. In addition, an employer may request that an employee provide some information about the nature of the disability. Employees with concerns about disclosing HIV/AIDS status to a supervisor should contact GLAD's Legal InfoLine at (800) 455-GLAD in order to strategize about ways to address any such requests.

Does an employer have to grant a request for a reasonable accommodation?

No, an employer is not obligated to grant each and every request for an accommodation; an employer does not have to grant a reasonable accommodation that will create an "undue burden" (i.e., significant difficulty or expense for the employer's operation). In addition, the employer does not have to provide a reasonable accommodation if the employee cannot perform the job function even with the reasonable accommodation.

When is a "reasonable accommodation" for an employee an "undue burden" for an employer?

In determining whether a requested accommodation creates an undue burden or hardship for an employer, courts examine a number of factors, which include:

- The employer's size, budget and financial constraints;
- The costs of implementing the requested accommodation; and
- How the accommodation affects or disrupts the employer's business.

Again, each situation is examined on a case-by-case basis.

An employer only has an obligation to grant the reasonable accommodation if, as a result of the accommodation, the employee is then qualified to perform the essential job duties. An employer does not have to hire or retain an employee who cannot perform the essential functions of the job, even with a reasonable accommodation.

EMPLOYER HEALTH INQUIRIES

What may an employer ask about an employee's health during the application and interview process?

Under the ADA, prior to employment, an employer cannot ask questions that are aimed at determining whether an employee has a disability. Examples of prohibited pre-employment questions are:

- Have you ever been hospitalized or under the care of a physician?
- Have you ever been on workers' compensation or received disability benefits?
- What medications do you take?

After an offer of employment, can an employer require a medical exam? What guidelines apply?

If an employer has 15 or more employees, they must comply with the ADA. After a conditional offer of employment, an employer may require a physical examination or medical history. The job offer, however, may not be withdrawn unless the results demonstrate that the person cannot perform the essential functions of the job with or without reasonable accommodation. The same medical inquiries must be made of each person in the same job category. In addition, the physical examination and medical history records must be segregated from personnel records, and there are strict confidentiality protections.

After employment has begun, the ADA permits an employer to only require a physical examination if it is job-related and consistent with business necessity.

HEALTH CARE WORKERS

How have the courts addressed fears that health care employees who perform invasive procedures, such as surgeons, will transmit HIV to patients?

The risk of HIV transmission from a health care worker to a patient is considered so small that it approaches zero. Nevertheless, in cases where hospitals have sought to restrict or terminate the privileges of HIV-positive health care workers who perform invasive procedures, courts have reacted with tremendous fear and have insisted on an impossible “zero risk” standard. As a result, the small number of courts that have addressed this issue under the ADA have upheld such terminations.

The employment provisions in the ADA provide that an employee is not qualified to perform the job if he or she poses a “direct threat to the health or safety of others.” To determine whether an employee poses a “direct threat,” a court analyzes:

- The nature, duration and severity of the risk;
- The probability of the risk; and
- Whether the risk can be eliminated by reasonable accommodation.

However, in the case of HIV-positive health care workers, courts have ignored the extremely remote probability of the risk and focused on the nature, duration and severity of the risk. The following excerpt from a recent case is typical of courts’ approach:

“We hold that Dr. Doe does pose a significant risk to the health and safety of his patients that cannot be eliminated by reasonable accommodation. Although there may presently be no documented case of surgeon-to-patient transmission, such transmission clearly is possible. And, the risk of percutaneous injury can never be eliminated through reasonable accommodation. Thus, even if Dr. Doe takes extra precautions ... some measure of risk will always exist ...”²

It is important to note that only a small number of courts have addressed the rights of HIV-positive health care workers. The AIDS Law Project believes that these cases have been incorrectly decided and are inconsistent with the intent of Congress in passing the ADA. Because of the unsettled nature of the law in this area, a health care worker who is confronted with potential employment discrimination should consult a lawyer or public health advocate.

ASSESSING DISCRIMINATION

How does an employee determine whether he or she has experienced discrimination?

While it may be useful to consult with a lawyer, the following steps can be helpful in beginning to consider and assess a potential employment discrimination problem.

- (1) Consider the difference between unfairness and illegal discrimination. The bottom line of employment law is that an employee can be fired for a good reason, bad reason, or no reason at all. A person can be legally fired for a lot of reasons, including a bad “personality match.” What they cannot be fired for is a discriminatory reason specifically outlawed by a statute.

² *Doe v. University of Maryland Medical System Corporation*, 50 F.3d 1261 (4th Cir. 1995)

- (2) In order to prove a discrimination claim (i.e., that you were fired, demoted, etc. because of discrimination and not because of some legitimate reason), you must be able to show the following:
- The employer knew or figured out that you are HIV-positive or have AIDS;
 - You were qualified to perform the essential functions of the job with or without reasonable accommodation; and
 - Adverse action was taken against you because of your HIV or AIDS status and the pretextual reason given by the employer for the adverse action is false.
- (3) If your employer knows that you have HIV or AIDS, identify exactly who knows, how they know, and when they found out. If you have not told your employer, is there any other way the employer would know or suspect your HIV status?
- (4) Consider the reasons why you believe that you are being treated differently because of HIV status, including the following areas:
- Have other employees in similar situations been treated differently or the same?
 - Has your employer followed its personnel policies?
 - Did the adverse treatment begin shortly after the employer learned of your HIV status?
 - Have you been out of work due to illness for any period of time and did the adverse treatment begin upon your

return to work?

- What will your employer's version of events be? How will you prove that the employer's version is false?
- (5) Do you have any difficulty fulfilling the duties of your job because of any HIV-related health or medical issue? Does your condition prevent full-time work, or require time off for medical appointments, lighter duties or a less stressful position? You might want to try brainstorming to create a reasonable accommodation that you can propose to your employer.
- (6) Here are some points to consider:
- How does the company operate and how would the accommodation work in practice?
 - Put yourself in your supervisor's shoes. What objections might be raised to the requested reasonable accommodation? For example, if you need to leave at a certain time for medical appointments, who would cover your duties?

■ Public Accommodation

Do Connecticut laws protect against discrimination by health care providers, businesses, and other public places?

Yes, under Connecticut law,³ and the ADA, it is unlawful to exclude a person with HIV from a public place (what the law refers to as a “public accommodation”) or to provide unequal or restricted services to a person with HIV in a public place. Under both statutes, the term “public

³ Conn. Gen. Stat. sec. 46a-64

accommodation” includes any establishment or business that offers services to the public.

Therefore, people with HIV are protected from discrimination in virtually every public place or business, including bars, restaurants, hotels, stores, schools, vocational or other educational programs, taxi cabs, buses, airplanes, and other modes of transportation, health clubs, hospitals, and medical and dental offices, as long as these facilities are generally open to the public.

Is discrimination by health care professionals against people with HIV still a problem?

Believe it or not, yes, people with HIV still face discrimination by hospitals, doctors, dentists, and other health care providers. This discrimination can take the form of an outright refusal to provide medical services or an illegal referral because of a patient’s HIV status.

What types of arguments do doctors who discriminate against people with HIV make, and are they legitimate?

Doctors typically try to justify discrimination against people with HIV with one of two arguments:

- (1) “Treating People with HIV is Dangerous” (Some doctors refuse to treat people with HIV based on an irrational fear of HIV transmission); and
- (2) “Treating People with HIV Requires Special Expertise” (Some doctors refer patients to other medical providers based on an inaccurate belief that general practitioners are not qualified to provide care to patients with HIV).

Both an outright refusal to provide medical treatment and unnecessary referrals on the basis of a person’s disability are unlawful under the ADA and Connecticut law.

How have courts and medical experts responded to these arguments?

Courts and medical experts have responded to these arguments in the following ways:

(1) “Treating People with HIV is Dangerous”

Doctors and dentists may claim that a refusal to treat a patient with HIV is legitimate because they fear they might contract HIV themselves through needlesticks or other exposures to blood. However, studies of health care workers have concluded that risk of contracting HIV from occupational exposure is minuscule, especially with the use of universal precautions.

For this reason, in 1998, the United States Supreme Court ruled in the case Bragdon v. Abbott that health care providers cannot refuse to treat people with HIV based on concerns or fears about HIV transmission.⁴

In addition to the legal perspective, both the American Medical Association and the American Dental Association, and many other professional health care organizations, have issued policies that it is unethical to refuse treatment to a person with HIV.

(2) “Treating People with HIV Requires Special Expertise”

In these cases, the merits of a discrimination claim depend upon whether, based on objective medical evidence, the services or treatment needed by the patient require a referral to a specialist or are within the scope of services and competence of the provider.

⁴ 524 U.S. 624 (1998)

In United States v. Morvant, a federal trial court rejected a dentist's claim that patients with HIV require a specialist for routine dental care.⁵ The court agreed with the testimony of experts who said that no special training or expertise, other than that possessed by a general dentist, is required to provide dental treatment to people with HIV. The court specifically rejected the dentist's arguments that he was unqualified because he had not kept up with the literature and training necessary to treat patients with HIV. While this case arose in the context of dental care, it is applicable to other medical settings as well.

What are the specific provisions of the ADA that prohibit discrimination by health care providers?

Under Title III of the ADA⁶, it is illegal for a health care provider to:

- (1) Deny an HIV-positive patient the “full and equal enjoyment” of medical services or to deny an HIV-positive patient the “opportunity to benefit” from medical services in the same manner as other patients.
- (2) Establish “eligibility criteria” for the privilege of receiving medical services, which tend to screen out patients who have tested positive for HIV.
- (3) Provide “different or separate” services to patients who are HIV-positive or fail to provide services to patients in the “most integrated setting.”
- (4) Deny equal medical services to a person who is known to have a “relationship” or “association” to a person with HIV, such as a spouse, partner, child, or friend.

⁵ 898 F. Supp. 1157 (E.D. La 1995)

⁶ 42 U.S.C. §§ 12181-12188

What specific health care practices constitute illegal discrimination against people with HIV?

Applying the specific provisions of the ADA above to the practice of health care, the following practices are illegal:

- A health care provider cannot decline to treat a person with HIV based on a perceived risk of HIV transmission or because the physician simply does not feel comfortable treating a person with HIV.
- A health care provider cannot agree to treat a patient only in a treatment setting outside the physician's regular office, such as a special hospital clinic, simply because the person is HIV-positive.
- A health care provider cannot refer an HIV-positive patient to another clinic or specialist, unless the required treatment is outside the scope of the physician's usual practice or specialty. The ADA requires that referrals of HIV-positive patients be made on the same basis as referrals of other patients. It is, however, permissible to refer a patient to specialized care if the patient has HIV-related medical conditions which are outside the realm of competence or scope of services of the provider.
- A health care provider cannot increase the cost of services to an HIV-positive patient in order to use additional precautions beyond the mandated OSHA and CDC infection control procedures. Under certain circumstances, it may even be an ADA violation to use unnecessary additional precautions which tend to stigmatize a patient simply on the basis of HIV status.
- A health care provider cannot limit the scheduled times for treating HIV-positive patients, such as insisting that an HIV-positive patient come in at the end of the day.

How does Connecticut law compare with the ADA?

Connecticut law will be interpreted in a similar manner to the ADA.

■ Housing

What laws prohibit discrimination in housing?

It is illegal under both Connecticut law⁷ and the National Fair Housing Amendments of 1989, to discriminate in the sale or rental of housing on the basis of HIV status. A person cannot be evicted from an apartment because of his or her HIV or AIDS status, or because he or she is regarded as having HIV or AIDS.

Are there exceptions to the housing anti-discrimination laws introduced above?

Yes, Connecticut law exempts a rental portion of a single-family dwelling if the owner maintains and occupies part of the living quarters as his or her residence, or for the rental of a unit in a residence that has four or fewer apartments when the owner occupies one apartment. In addition, the Fair Housing act exempts, in some circumstances, ownership-occupied buildings with no more than four units, single-family housing sold or rented without the use of a broker and housing operated by organizations and private clubs that limit the occupancy to members.

⁷ Conn. Gen. Stat. sec. 46a-64c

■ Credit

What protections exist under Connecticut anti-discrimination law with regard to credit?

Any person who “regularly extends or arranges for the extension of credit” for which interest or finance charges are imposed (e.g. a bank, credit union, or other financial institution), may not discriminate because of HIV status in any credit transaction.⁸

■ Remedies for Discrimination

CONNECTICUT LAW

How do I file a complaint of discrimination?

You file your complaint with the Connecticut Commission on Human Rights and Opportunities (CHRO). The main office of the CHRO is at 21 Grand St., Hartford, CT 06106. You should call them because they will want you to file your case in the appropriate regional office. Their number is (800) 477-5737, and you can access their website at www.state.ct.us/chro. There is no charge to file a complaint.

The complaint must be in writing and under oath, and it must state the name and address of the individual making the complaint as well as the entity he or she is complaining against (called the “respondent”). The complaint must set out the particulars of the alleged unlawful acts, and it is advisable also to state the times they occurred.⁹

If you are a state employee, you may file your case directly in court. State employees can skip over the CHRO process entirely.

⁸ Conn. Gen. Stat. sec. 46a-66.

⁹ Conn. Gen. Stat. sec. 46a-82

Do I need a lawyer?

No. The process is designed to allow people to represent themselves. However, GLAD strongly encourages people to find lawyers to represent them throughout the process. Not only are there many legal rules governing the CHRO process, but also employers and other defendants are likely to have legal representation.

What are the deadlines for filing a complaint of discrimination?

For most people, a complaint must be filed with the CHRO within 180 days of the last discriminatory act or acts.¹⁰ There are very few exceptions for lateness, and GLAD encourages people to move promptly in filing claims.

What happens after a complaint is filed with the CHRO?¹¹

When you file a complaint with the CHRO, you will be given a packet of information explaining the CHRO procedures and deadlines. Please review these and follow the deadlines.

After filing your complaint, and within 90 days of receiving the answer of the respondent, the CHRO will review the complaint and answer to determine if any further investigation is necessary. This is called a merit assessment review (MAR). Since many cases are dismissed at this stage of the proceedings, it is important that you reply to the respondent's answer within 15 days of receiving it.

After the MAR, if the case is dismissed, you will be given 15 days to request the right to move your complaint from CHRO into the courts. If you do not request to remove your complaint from CHRO, there will be a review of your case, and within 60 days a decision will be made to either reinstate your complaint or to uphold the dismissal.

¹⁰ Conn. Gen. Stat. sec. 46a-82(e)

¹¹ See generally, Public Act 11-237

After the MAR, if the case is not dismissed, an investigator will be assigned and a mandatory mediation conference will be held within 60 days. If negotiations fail to produce a settlement agreeable to all parties, either party or the CHRO can request early legal intervention. The CHRO has 90 days to act upon this request and make one of the following decisions:

1. the investigator will continue to collect evidence and will make a decision of “reasonable cause” or “no reasonable cause.”
2. a Hearing Officer will be appointed to decide the merits of the case in a trial-type hearing.
3. the complaint will be dismissed.

If there is not a request for early legal intervention, then as in 1. above, the investigator will continue to collect evidence and will make a determination of “reasonable cause” or “no reasonable cause.” If a finding of “reasonable cause” is made, you can request either to have the case heard at the CHRO or to move it to Superior Court. If a finding of “no reasonable cause” is made, you have 15 days to request reconsideration.

Note that in housing discrimination cases, the CHRO must complete its investigation within 100 days of filing and the final disposition within one year, unless it is impracticable to do so.¹²

What are the legal remedies the CHRO may award for discrimination if an individual wins his or her case there?

Employment: may include hiring, reinstatement or upgrading, backpay, restoration in a labor organization, cease and desist orders, and other relief that would fulfill the purposes of the anti-discrimination laws (e.g. training programs, posting of notices.)¹³

¹² For sexual orientation Conn. Gen. Stat. sec 46a-81(e) and for gender identity or expression Conn. Gen. Stat. sec. 46a-64c(f)

¹³ Conn. Gen. Stat. sec. 46a-86 (a - c)

(Note that when cases are filed in court, emotional distress damages and attorneys' fees are also available to a successful complainant. These are not available from the CHRO.)¹⁴

Housing: damages (expenses actually incurred because of unlawful action related to moving, storage, or obtaining alternate housing); cease and desist orders, reasonable attorney's fees and costs, and other relief that would fulfill the purposes of the anti-discrimination laws.¹⁵ The CHRO may also order civil fines to be paid to the state.¹⁶

Public Accommodations: cease and desist orders, and other relief that would fulfill the purposes of the anti-discrimination laws. The CHRO may also order civil fines to be paid to the state.¹⁷

Credit: cease and desist orders, and other relief that would fulfill the purposes of the anti-discrimination laws (e.g. allowing person to apply for credit on non-discriminatory terms).¹⁸

Should I take my case away from the CHRO and file in court? How do I do so?

This is a decision you should make with your lawyer. Greater damages are available to you in state court than at the CHRO, including emotional distress damages and attorney's fees.

To sue an entity in state court as opposed to the CHRO, you must follow several steps and meet various deadlines.¹⁹

- Your complaint must have been filed on time at the CHRO (i.e., within 180 days of the last act of discrimination);

¹⁴ See *Bridgeport Hospital v. CHRO*, 232 Conn. 91 (1995); *Delvecchio v. Griggs & Browne Co., Inc.*, 2000 Conn. Super. LEXIS 1149 (April 17, 2000) ("The CHRO is without authority to award a prevailing party attorneys' fees, punitive or compensatory damages or damages for emotional distress.")

¹⁵ Conn. Gen. Stat. sec. 46a-86 (a, c)

¹⁶ Conn. Gen. Stat. sec. 46a-81e(f)

¹⁷ Conn. Gen. Stat. sec. 46a-86 (a); sec. 46a-64 (c)

¹⁸ Conn. Gen. Stat. sec. 46a-86 (a); sec. 46a-98 (outlining additional damages available for cases filed in Superior Court within one year of discriminatory act)

¹⁹ Conn. Gen. Stat. sec. 46a-101 to 46a-102

- Your complaint must have been pending with the CHRO more than 180 days (although if you and your employer agree to request the case’s removal to court, you may do so before the 180 days elapse) or the merit assessment review must have been completed;
- You must request a release of your complaint from the CHRO for the purpose of filing a court action (which the CHRO must grant except when the case is scheduled for public hearing or they believe the complaint can be resolved within 30 days);
- You must file your court action within 2 years of the date of filing your complaint with the CHRO; and
- You must file your court action within 90 days after you receive a release from the CHRO to file your case in court.

What can I do if my employer fires me or my landlord evicts me for filing a complaint of discrimination?

It is illegal for any employer to retaliate in these circumstances, and the employee could file an additional complaint against the employer for retaliation. “Retaliation” protections cover those who oppose any discriminatory employment practice, as well as those who participate in certain other proceedings.²⁰ If the employer takes action against an employee because of that conduct, then the employee should be able to state a claim of retaliation.²¹

Likewise, it is illegal for a landlord to “coerce, intimidate, threaten or interfere with” anyone who file a complaint.²²

²⁰ Conn. Gen. Stat. sec. 46a-60 (4)

²¹ Compare *Provencher v. CVS Pharmacy*, 76 F.E.P. Cases (BNA) 1569 (1st Cir. 1998)(upholding federal retaliation claim of gay man)

²² Conn. Gen. Stat. sec 46a-64c(a)(9)

What can I do to prepare myself before filing a complaint of discrimination?

Call the GLAD Legal InfoLine at 800-455-GLAD (4523) any weekday between 1:30 and 4:30 p.m. to talk about options.

As a general matter, people who are still working with or residing under discriminatory conditions have to evaluate how filing a case will affect their job or housing, and if they are willing to assume those possible consequences. Of course, even if a person has been fired, or evicted, he or she may decide it is not worth it to pursue a discrimination claim. This is an individual choice which should be made after gathering information to make an informed choice.

Some people prefer to meet with an attorney to evaluate the strength of their claims. It is always helpful if you bring an outline of what happened on the job that you are complaining about, organized by date and with an explanation of who the various players are (and how to get in touch with them). Try to have on hand copies of your employee handbooks or personnel manuals, any contracts, job evaluations, memos, discharge letters and the like. If you are concerned about a housing matter, bring a copy of your lease, along with any notices and letters you have received from your landlord.

FEDERAL LAW

What are some potential remedies for discrimination under federal law?

To pursue a claim under the Americans with Disabilities Act for employment discrimination, a person must file a claim with the Equal Employment Opportunity Commission (EEOC) within 180 days of the date of the discriminatory act and the employer must have at least 15 employees. However, an employee filing a disability case with the CHRO does not have to file a separate claim with the EEOC. There is a check-off on the CHRO complaint form to have the CHRO file the claim with the EEOC. The EEOC will then defer to the CHRO's

investigation. If a person initially institutes his or her complaint with the CHRO, the time limit for filing a Federal complaint is extended to the earlier of 300 days or 30 days after the CHRO has terminated the case. A person may remove an ADA claim from the EEOC and file a lawsuit in state or federal court.

To pursue a claim under the Americans with Disabilities Act for discrimination in a place of public accommodation, a person may, without first going to an administrative agency, file a claim in state or federal court for injunctive relief only (i.e., seeking a court order that the discriminatory conduct cease). Money damages are not available for violation of Title III of the ADA unless they are sought by the United States Department of Justice. However, a person may recover money damages under the Federal Rehabilitation Act in cases against entities that receive federal funding. To pursue a claim under the Rehabilitation Act, a person may file an administrative complaint with the regional office of the federal Department of Health and Human Services and/or file a lawsuit directly in court.

To pursue a claim under the National Fair Housing Act for discrimination in housing, a person may file a complaint with the United States Office of Housing and Urban Development within one year of the violation. A person may also bring a lawsuit within two years of the violation. A lawsuit may be filed whether or not a person has filed a complaint with HUD.

HIV Testing & Privacy

■ HIV Testing

CONSENT

Does Connecticut have a law governing HIV testing?

Yes, but the law was changed significantly in 2009 eliminating the need to get specific informed consent each time an HIV-related test is done and the need to do pre-test counseling. Instead, a general consent for medical care is sufficient as long as the general consent contains an instruction to the patient that the patient “may” be tested for HIV unless the patient “choose[s] not to be tested for HIV.”²³ Under this system, the burden is on the patient who does not want to be tested for HIV to communicate that refusal to the healthcare provider.

If the person declines an HIV-related test, then that will be documented in the patient’s record, but otherwise the medical provider does not need to get the patient’s specific consent to perform an HIV-related test. The term “HIV-related test” includes a test for any agent “thought to cause or indicate the presence of HIV infection.”²⁴

POST-TEST COUNSELING REQUIREMENTS

Are there requirements for what must be provided to the patient at the time the results of the HIV-related test are communicated?

Yes, Connecticut law specifies counseling or referral to counseling must be provided, as needed:²⁵

- for coping with the emotional consequences of learning an HIV test result,

²³ Conn. Gen. Stat. sec. 19a-582(a)

²⁴ Conn. Gen. Stat. sec. 19a-581 (6)

²⁵ Conn. Gen. Stat. sec. 19a-582 (c)

- regarding potential discrimination issues,
- for behavior modification to prevent transmission,
- to inform the person of available medical treatments and services and HIV support services agencies, and
- regarding the need to notify partners.

CONSENT OF MINORS

Can a physician test a minor for HIV without consent of a parent or guardian?

Yes, Connecticut law explicitly provides that the “consent of a parent or guardian shall not be a prerequisite to testing of a minor.”²⁶

Connecticut law also requires that at the time a minor receives the test result, if he or she was tested without parental consent, the provider must give the minor counseling or referrals to “work towards” involving the minor’s parents in decision-making about medical care. In addition, the minor must receive actual counseling about the need to notify partners.²⁷

HIV TESTING WITHOUT CONSENT

Are there circumstances under which Connecticut law permits HIV testing, even against a person’s wishes?

Yes, Connecticut law permits involuntary HIV testing, without the need for informed consent, in several situations. The following four circumstances are the most important circumstances permitting involuntary testing:

²⁶ Conn. Gen. Stat. sec. 19a-582 (a)

²⁷ Conn. Gen. Stat. sec. 19a-582 (c).

(1) Occupational Exposure – Significant Exposure Required

Connecticut law permits a nonconsensual “HIV-related test” of the source of a “significant exposure”²⁸ to HIV which occurs during a person’s occupational duties.²⁹

In order to obtain a nonconsensual HIV test of a source, the subject employee must:

- Document the occurrence of a significant occupational exposure and complete an incident report within 48 hours;
- Have a negative baseline HIV test within 72 hours;
- Through a physician, have attempted to obtain and been refused, voluntary consent from the source;
- “Be able to take meaningful immediate action...which could not otherwise be taken” (such as beginning a prophylactic drug regimen or making decisions regarding pregnancy or breastfeeding); and
- Have an “exposure evaluation group” determine that the above criteria are met.³⁰

²⁸ The threshold requirement that there be a “significant exposure” means “a parenteral exposure such as a needlestick or cut, or mucous membrane exposure such as a splash to the eye or mouth, to blood or a cutaneous exposure involving large amounts of blood or prolonged contact with blood, especially when the exposed skin is chapped, abraded, or afflicted with dermatitis.” Conn. Gen. Stat. sec. 19a-581 (14). Department of Health Services Regulations additionally list a variety of internal organ fluids whose contact can constitute a “significant exposure” and lists sexual assault in the course of occupational duties as a mode of “significant exposure” as well. See Department of Public Health, Public Health Code sec. 19a-589-1(o). Exposure to urine, feces, saliva, sweat, tears, and vomit is excluded, unless the fluid in question contains visible amounts of blood. Likewise, human bites or scratches are excluded unless there is direct blood to blood or blood to mucous membrane contact. Id.

²⁹ Conn. Gen. Stat. sec. 19a-582 (d)(5).

³⁰ An “exposure evaluation group” means at least three impartial health care providers, one of whom must be a physician, who determine the existence of a “significant exposure.” Conn. Gen. Stat. sec. 19a-581 (15).

How the Test Occurs

If the source is a patient in a health, correctional, or other facility, an available sample of blood may be tested or a blood sample may be drawn from the source and tested.

If the source is not in such a facility and a physician certifies that there has been a significant exposure, the worker may seek a court order for testing.

The employer must pay the cost of the HIV test.

(2) Inability to Consent

A licensed health care provider may order a nonconsensual HIV test when the subject is unable to consent or lacks capacity to give or refuse consent and the test is necessary for “diagnostic purposes to provide appropriate urgent care.”³¹

(3) Prisoners

The Department of Correction may perform involuntary HIV testing on an inmate either because it is necessary for the diagnosis or treatment of an illness, or if the inmate’s behavior poses a significant risk of transmission to another inmate or has resulted in a significant exposure to another inmate.^{32,33} In both situations, there must be no reasonable alternative to testing available to achieve the same goal.

³¹ Conn. Gen. Stat. sec. 19a-582 (d)(1)

³² “Significant risk of transmission” means “sexual activity that involves transfer of one person’s semen, vaginal or cervical secretions to another person or sharing of needles during intravenous drug use.” Conn. Gen. Stat. sec. 19a-581 (13).

³³ Conn. Gen. Stat. sec. 19a-582 (d)(6), (d)(7)

(4) By Court Order

Connecticut law contains a broad provision permitting a court to order an HIV test when the court determines that there is a “clear and imminent danger to the public health or the health of a person and that the person has demonstrated a compelling need for the HIV-related test result which cannot be accommodated by other means.”³⁴ In its assessment, the court must weigh the need for the test result against both the “privacy interests of the test subject and the public interest which may be disserved by involuntary testing.”^{35,36}

HIV TESTING AND INSURERS

Do the same laws that pertain to testing done by health organizations pertain to testing done by insurers?

No, Connecticut law makes a distinction between HIV testing by health organizations and HIV testing done by insurers. A separate set of laws governs HIV testing by insurers, rather than the general HIV testing statute.³⁷

In order to take any HIV-related test of an insurance applicant, the insurer must obtain *written informed consent*.³⁸ The Commissioner of Insurance has developed a required format for such consent. An insurer may use an alternative form which must be filed with the Insurance Commissioner.

³⁴ Conn. Gen. Stat. sec. 19a-582 (d)(8)

³⁵ Conn. Gen. Stat. sec. 19a-582 (d)(8)

³⁶ Additional provisions for HIV testing without consent under Connecticut law include: (1) testing human organs, tissues, blood, or semen which are being used in medical research or therapy or for transplantation; (2) for research purposes if the identity of the subject cannot be determined; or (3) to determine the cause of death. Conn. Gen. Stat. sec. 19a-582 (d)(2-4).

³⁷ Conn. Gen. Stat. sec. 19a-586

³⁸ Conn. Gen. Stat. sec. 19a-586

May life and health insurers and health centers disclose a positive HIV-related test result to any group for any reason?

Yes, the law permits life and health insurers and health centers to disclose a positive HIV-related test result to an organization that collects information about insurance applicants for the purpose of detecting fraud or misrepresentation, but such disclosure must be in the form of a code that includes many other test results and could not therefore be used to reasonably identify an applicant's test result as an HIV-related test.³⁹

HIV TESTING OF PREGNANT WOMEN AND NEWBORNS

Are there unique requirements for the administration of HIV tests for pregnant women and newborns?

Yes, any health care provider giving prenatal care to a pregnant woman must explain to her that HIV testing is a part of routine prenatal care and inform her of the health benefits to herself and her newborn of being tested for HIV infection. The requirements for consent and post-test counseling are the same as those discussed at the beginning of this topic.⁴⁰ If the woman consents to HIV testing the result will be listed in her medical file.

If a pregnant woman is admitted for delivery and there is no documentation of HIV-related testing in her medical record, the health care provider must inform her of the health benefits to herself and her newborn of being tested for HIV infection either before delivery or within 24 hours after delivery, and the health care provider must then administer an HIV test unless there is a specific written objection from the patient.⁴¹

³⁹ Conn. Gen. Stat. sec. 19a-587

⁴⁰ Conn. Gen. Stat. sec. 19a-593 (a)

⁴¹ Conn. Gen. Stat. sec. 19a-593 (b)

Are there HIV testing laws that are specific to newborns?

Yes, all newborns shall be administered an HIV-related test as soon after birth as medically appropriate, unless the infant's parents object to the test as being in conflict with their "religious practice." This mandate does not apply if the mother was tested pursuant to the laws described above.⁴²

In addition, the Department of Public Health may establish a registry of data on infants who have been exposed to HIV or AIDS medication in order to study the potential long-term effects of such medication on infants.

AIDS VACCINE RESEARCHERS

Is there an HIV-related law that governs HIV/AIDS vaccine researchers?

Yes, the HIV-related law that governs HIV/AIDS vaccine researchers states that when a drug is developed and tested to determine its success as a vaccine against HIV/AIDS, a manufacturer, research institution, or researcher will not be held liable for civil damages resulting from clinical trials where the drug is administered to research subjects. This immunity from liability must be presented to the research subject in writing and that person (or his or her parent or guardian in the case of a minor) must provide informed written consent to act as a research subject.⁴³

⁴² Conn. Gen. Stat. sec. 19a-55 (a & c)

⁴³ Conn. Gen. Stat. sec. 19a-591(a & b)

■ Privacy

CONFIDENTIALITY OF HIV TEST RESULTS

Are there laws in Connecticut that protect the privacy of medical information, such as HIV?

Connecticut law contains a broad prohibition against the disclosure by *any person*, without a written release, of “confidential HIV-related information.”^{44,45}

Does a person with HIV have a Constitutional right to privacy?

Many courts have found that a person has a constitutional privacy right to the nondisclosure of HIV status. Courts have based this right on the Due Process Clause of the U.S. Constitution, which creates a privacy interest in avoiding disclosure of certain types of personal information.

The constitutional right to privacy can only be asserted when the person disclosing the information is a state or government actor -- e.g. police, prison officials, doctors at a state hospital.

To determine whether there has been a violation of this right to privacy, courts balance the nature of the intrusion into a person’s privacy against the weight to be given to the government’s legitimate reasons for a policy or practice that results in disclosure.

⁴⁴ The term “confidential HIV-related information” means any information “pertaining to” a person who has “been counseled regarding HIV infection, is the subject of an HIV-related test or, who has been diagnosed as having HIV infection, AIDS, or HIV-related illness.” Conn. Gen. Stat. sec. 19a-581 (7), (8). It includes information which even reasonably could identify a person as having such conditions and information relating to such individual’s partners. Conn. Gen. Stat. sec. 19a-581 (8).

⁴⁵ Conn. Gen. Stat. sec. 19a-583 (a).

EXCEPTIONS TO THE CONNECTICUT HIV PRIVACY STATUTE

Are there circumstances under which Connecticut law permits the disclosure of HIV status without written informed consent?

Yes, Connecticut law provides for disclosure of HIV status under specifically prescribed circumstances:

- To a health care provider or facility when necessary to provide “appropriate care or treatment.”⁴⁶
- To a health care worker or other employee where there has been a “significant occupational exposure” and the requirements articulated above are met.
- To employees of hospitals for mental illness operated by the Department of Mental Health and Addiction Services if the infection control committee determines the patient’s behavior poses a significant risk of transmission to another patient.⁴⁷ Disclosure may only occur if it is likely to prevent or reduce the risk of transmission and no reasonable alternative, such as counseling, is available to achieve the same goal.
- To employees of facilities operated by the Department of Correction to provide services related to HIV-infection or if the medical director and chief administrator determine that the inmate’s behavior poses a significant risk of transmission to another inmate or has resulted in a significant exposure to another inmate at the facility.⁴⁸
- To life and health insurers in connection with underwriting and claims activity for life, health, and disability benefits.⁴⁹

⁴⁶ Conn. Gen. Stat. sec. 19a-583(a) (4)

⁴⁷ Conn. Gen. Stat. sec. 19a-583 (8)

⁴⁸ Conn. Gen. Stat. sec. 19a-583 (9)

⁴⁹ Conn. Gen. Stat. sec. 19a-583 (11)

- To any person allowed access to such information by a court order, as described above. There are safeguards to protect the privacy of the source in any such court proceeding and subsequent disclosure of HIV-related information⁵⁰

REMEDIES

How can violations of the testing and privacy statute be addressed?

Under Connecticut law, a person can recover compensatory damages for any injury suffered from a “willful” violation of the informed consent and confidentiality requirements.⁵¹

The phrase “willful” violation has been interpreted by the Supreme Court of Connecticut to mean simply that the disclosure of HIV-related information must be knowingly made. It need not be intended to produce injury.⁵²

STATE HIV REPORTING REQUIREMENTS

Does Connecticut have reporting laws that require HIV or AIDS diagnoses to be reported to the Connecticut Department of Health?

Yes. All states require that certain health conditions be reported to public health authorities in order to track epidemiological trends and develop effective prevention strategies. Connecticut requires that physicians report to the Department of Public Health; 1) patients diagnosed with AIDS; 2) patients testing positive for HIV; 3) and children born to HIV positive women. Information collected is kept confidential.

⁵⁰ Conn. Gen. Stat. sec. 19a-583

⁵¹ Conn. Gen. Stat. sec. 19a-590

⁵² See *Doe v. Marselle*, 675 A.2d 835, 236 Conn. 845 (1996)

DUTY TO WARN

What does the phrase “duty to warn” refer to?

The term “duty to warn” refers to situations in which a counselor or physician may learn that a client is engaging in unsafe sex without having disclosed his or her HIV-positive status to the partner. Many people have asked whether there is a legal basis to breach client or patient confidentiality under these circumstances.

Does Connecticut have an HIV-specific duty to warn statute that pertains to physicians and public health officers?

Yes, Connecticut law permits both public health officers and physicians, under certain circumstances, to inform or warn partners that they may have been exposed to HIV.⁵³ The term “partner” means an “identified spouse or sex partner of the protected individual or a person identified as having shared hypodermic needles or syringes with the protected individual.”⁵⁴ The requirements for such a disclosure by a public health officer are that:

- There is a reasonable belief of a significant risk of transmission to the partner;
- The public health officer has counseled the individual regarding the need to notify a partner and reasonably believes that the individual will not disclose to the partner; and
- The public health officer has informed the protected individual of his or her intent to make the disclosure.

A physician may only warn or inform a known partner if both the partner and the individual with HIV are under the physician’s care. A physician may also disclose confidential HIV related information to a

⁵³Conn. Gen. Stat. sec. 19a-584

⁵⁴Conn. Gen. Stat. sec. 19a-581 (10)

public health officer for the purpose of warning partners, if the physician takes the same steps with respect to his or her patient as public health officers must take above.

In making such a warning, the physician or public health official shall not disclose the identity of the HIV-infected individual and, where practicable, shall make such disclosure in person.

Does Connecticut have statutes that allow other health care providers to disclose a client's HIV status?

No. The AIDS Law Project believes that any general laws related to “duty to warn”⁵⁵ do not pertain to HIV disclosure, because Connecticut law specifically protects the confidentiality of HIV-related information and makes no exceptions for mental health providers, such as psychologists and social workers.

Connecticut law contains a broad prohibition on the disclosure of confidential HIV-related information by any person.⁵⁶ Since the Connecticut legislature specifically provided a narrow exemption permitting warning by physicians and public health officers only,⁵⁷ there is a strong argument that the legislature has addressed that issue and decided not to permit other providers to disclose HIV status.

Nevertheless, the issue of duty to warn is an evolving and unclear area of law. **Mental health professionals must consult an attorney or supervisor for advice if he or she believes that a client's communications justify breaching client confidentiality and disclosing a client's HIV status to a third person.**

⁵⁵ Conn. Gen. Stat. sec. 52-146c, §52-146f

⁵⁶ Conn. Gen. Stat. sec. 19a-583(a)

⁵⁷ Conn. Gen. Stat. sec. 19a-581(12)

Are there requirements for how to disclose HIV-related information?

Yes, whenever confidential HIV-related information is disclosed, the disclosure must be accompanied by the following statement, or by a statement using substantially similar language:

“This information has been disclosed to you from records whose confidentiality is protected by state law. State law prohibits you from making any further disclosure of it without the specific written consent of the person to whom it pertains, or as otherwise permitted by said law. A general authorization for the release of medical or other information is NOT sufficient for this purpose.”

Such a statement must be made in writing whenever possible.⁵⁸

Notation of any disclosure must be made in the subject’s medical records, except for disclosures made:

- To federal or state authorities;
- In the course of ordinary medical review; or
- To life and health insurers and government payers in connection with claims for life, health, and disability benefits.

⁵⁸ Conn. Gen. Stat. sec. 19a-585 (a)

Other HIV-Related Laws

■ Syringe Access

A. Needle Exchange Programs

Do Connecticut laws provide for access to clean needles for injection drug users to prevent HIV transmission?

Under Connecticut law⁵⁹ specific provision is made for needle and syringe exchange programs in the health departments of the three cities with the highest number of AIDS cases among intravenous drug users. These programs shall provide free and anonymous exchange of up to thirty needles and syringes per exchange and offer education about the transmission and prevention of HIV and offer assistance in obtaining drug treatment services.

B. Pharmacy Access

Can I purchase a hypodermic needle or syringe over the counter at a pharmacy?

Yes. Connecticut law permits a pharmacy, health care facility, or needle exchange program to sell ten or fewer syringes to a person without a prescription.⁶⁰

⁵⁹ Conn. Gen. Stat. sec. 21a-65

⁶⁰ Conn. Gen. Stat. sec. 21a-65 (b)

Gay & Lesbian Advocates & Defenders (GLAD) is the leading legal rights organization in New England dedicated to ending discrimination based on sexual orientation, HIV status and gender identity and expression. Through impact litigation, education and public policy work, GLAD seeks to create a better world that respects and celebrates diversity—a world in which there is equal justice under law for all.

GLAD's Legal InfoLine and publications are provided *free of charge* to all who need them. We hope that those who are able will make a contribution to ensure that GLAD can continue the fight for equal justice under the law.

To make a tax-deductible contribution, visit our website, www.glad.org, or call us at (800) 455-GLAD (4523) with your credit card, or mail your check, payable to GLAD to 30 Winter Street, Suite 800, Boston, MA 02108. If your workplace has a matching gift program, please be sure to have your donation matched. Please contact us if you would like more information on becoming a GLAD partner.

Thank You!



GLAD



EQUAL JUSTICE UNDER LAW

Gay & Lesbian Advocates & Defenders
30 Winter Street, Suite 800
Boston, MA 02108
Tel 617.426.1350
1.800.455.GLAD (4523)
Fax 617.426.3594

www.glad.org