

# Working While Under a Guardianship

There is a long and rich history of adults working in integrated community-based settings while under a guardianship. The law does not prevent adults under guardianship from working and most guardians do not interfere with an individual's right to work. Nevertheless, guardianship can be an obstacle to employment: the National Core Indicators survey found that adults under a guardianship were significantly less likely to work in a community job.<sup>1</sup> This is likely attributable to a combination of factors, including guardians who may de-value work or discourage an individual under guardianship from working due to biases and misconceptions about people with disabilities working.

While guardianships can restrict many important rights and provide certain protections, being under a guardianship is typically *not* a barrier to work. In fact, the majority of state guardianship laws explicitly require or encourage the guardian to allow the individual under guardianship as much autonomy and independence as possible.<sup>2</sup> Working is consistent with achieving independence and should be promoted for all people, regardless of an individual's guardianship status.

## What is a guardianship?<sup>3</sup>

A court can order a guardianship when a judge finds an individual lacks capacity to make certain decisions according to state law standards. The court then appoints a third party to make those decisions for the individual and issues an order that describes what types of decisions the guardianship covers.

## Legal expertise on state law is needed.

The law on guardianship varies widely from state to state. Therefore, if you encounter an issue with someone under guardianship working (such as resistance from a guardian or what you suspect is misinformation from a guardian), a best practice is to get guidance from an expert in guardianship law in your state and to find someone to help advocate for the individual.

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<sup>1</sup> National Core Indicators, DATA BRIEF APRIL 2019, at 5, available at [https://www.nationalcoreindicators.org/upload/core-indicators/NCI\\_GuardianshipBrief\\_April2019\\_Final.pdf](https://www.nationalcoreindicators.org/upload/core-indicators/NCI_GuardianshipBrief_April2019_Final.pdf).

<sup>2</sup> "Sixty-three percent of state adult guardianship statutes explicitly contain language that where entered, guardianships either should or shall encourage the development of maximum self-reliance and independence of the protected person." Eleanor Crosby Lanier, *Understanding the Gap Between Law and Practice: Barriers and Alternatives to Tailoring Adult Guardianship Orders*, 36-37 Buff. Pub. Int. L.J. 155, 163 (2019), available at <https://digitalcommons.law.buffalo.edu/bpili/vol36/iss1/8/>. See also Uniform Guardianship, Conservatorship, and Other Protective Arrangements Act, Art. 3, § 313 (b).

<sup>3</sup> Note that some states call a guardianship a conservatorship.

## Types of guardianship.

Despite the variation in state laws, there are certain universal concepts in the United States that can help inform advocacy on behalf of people under guardianship who want to work. As a first step, you should determine what type of guardianship an individual has. There is more than one type of guardianship:

1. ***Plenary (or full) guardianship of the person*** – A plenary guardianship is where a court finds an individual lacks capacity to make decisions broadly, and appoints a guardian to make all types of decisions allowed under state guardianship law.
2. ***Limited guardianship of the person*** – A limited guardianship is where a court determines the individual lacks capacity to make some types of decisions under state guardianship law. The court then appoints a guardian to make only certain types of decisions. The guardianship order lists the type of decisions covered by the limited guardianship.
3. ***Guardianship or conservatorship of the estate*** – A guardianship of the estate is when a court appoints a guardian to make decisions about an individual’s real or personal property and finances.

Guardianship has different legal implications in different states, and for different individuals depending on what the court has ordered. An expert in state guardianship law will be able to offer appropriate advice about how to promote the individual’s right to work despite restrictions of a guardianship or a resistant guardian who may misunderstand the role prescribed by the court order. When working with a state law expert, it is important to determine if the expert’s values are aligned with your organizational mission and if the expert views guardianship law through a civil rights lens.

## Resources for state guardianship experts/referrals to state law guardianship experts:

- [State and Territory Protection & Advocacy Agency](#)
- [Local chapters of The Arc](#)
- [National Guardianship Association](#)
- [National Academy of Elder Law Attorneys](#)
- [State and Territory Developmental Disability Councils](#)

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