

New EEOC Guidance Explains ADA Protections For Opioid Users

Written by Michael L. Rosen, Christopher Feudo, Emily Nash

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The rise in opioid use and addiction in the United States has raised complicated issues for employers. On August 5, 2020, the U.S. Equal Employment Opportunity Commission (EEOC) addressed some of these issues by issuing guidance on employers' obligations under the Americans with Disabilities Act (ADA) related to opioid use among employees. The ADA protects employees from termination and other adverse actions based on qualifying disabilities, and it requires that employers provide reasonable accommodations for employees with qualifying disabilities. The EEOC's [new guidance](#) makes clear that legal use of opioids and treatment for past opioid addiction qualify for ADA protection.

According to the guidance, an employee may be entitled to ADA protections if they are taking prescription opioids like oxycodone to treat pain (either because the medical condition causing the pain qualifies as a "disability" or because the medication itself interferes with the employee's everyday functioning), or are addicted to opioids and not currently using opioids illegally (Opioid Use Disorder). An employer cannot terminate an employee on either basis without first considering whether the employee can perform their duties safely and effectively through a reasonable accommodation. An employer's determination that the employee cannot do the job even with a reasonable accommodation must be supported by objective evidence.

Further, the EEOC guidance explains that employers must offer a reasonable accommodation related to employee opioid use or addiction when an employee has requested it and it would not involve significant difficulty or expense. Employers may require that employees seeking such a reasonable accommodation put the request in writing and explain how their work is affected by their opioid use or addiction. Reasonable accommodations in this context may include permitting altered work schedules to attend addiction meetings or temporary transfers to other positions. The ADA's reasonable accommodation requirement does not require, however, that an employer lower production or performance standards, eliminate essential functions of a job, or pay for work that is not performed. Employees may also be entitled to use sick and accrued leave and unpaid Family Medical Leave Act leave if they leave to seek treatment or recovery for opioid use or addiction.

Importantly, the guidance makes clear that the ADA does not protect employees using opioids illegally. Employers are still permitted to terminate or discipline employees based on illegal use of opioids, even if such use does not affect that employee's performance or cause any safety concerns. Given this distinction, employers who require drug testing of employees should keep this new guidance in mind when acting on any employee test results. The EEOC directs employers to give their employees an opportunity, before or after the test, to explain lawful drug usage that results or might result in a positive test.

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