

# Opioid Addiction and the ADA: The EEOC Provides Timely Guidance

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It is established that an employee's drug addiction may qualify as a disability under the Americans with Disabilities Act (ADA), provided the employee is not currently using illicit substances. In the U.S. Equal Employment Opportunity Commission's (EEOC) *Technical Assistance Manual on the Employment Provisions (Title I) of the Americans with Disabilities Act*, the EEOC states that "[p]ersons addicted to drugs, but who are no longer using drugs illegally and are receiving treatment for drug addiction or who have been rehabilitated successfully, are protected by the ADA from discrimination on the basis of past drug addiction." While the EEOC's nonregulatory pronouncements do not have the force of law, courts addressing the issue generally have adopted this position.

In the face of a nationwide opioid epidemic, on August 5, 2020, the EEOC released [informal guidance](#) clarifying the agency's position specifically with regard to opioid addiction and the employment provisions of the ADA. The EEOC observed that "[the] information [contained in the guidance] is not new policy; rather, [the] document applies principles already established in the ADA's statutory and regulatory provisions as well as previously-issued guidance." Per the guidance, opioids include prescription drugs such as codeine, morphine, oxycodone, hydrocodone, and meperidine, and illegal drugs like heroin. The guidance also states that opioids may also include buprenorphine and methadone, "which can be prescribed to treat opioid addiction in a Medication Assisted Treatment (MAT) program."

Although the guidance does not have the force of law, it contains several important points that may inform employer policies and practices.

First, the guidance reinforces the premise that opioid addiction is a diagnosable medical condition that may be covered by the ADA. On that basis, an employer may be required to consider reasonable accommodations for an affected employee, such as a modified work schedule, or intermittent time off to attend therapy or support group sessions related to treatment or recovery.

Second, the guidance distinguishes between the current use of illegal opioids versus the current use of legal opioids. While it remains the case that the ADA does not protect an employee who currently uses illegal opioids, the guidance clarifies that the ADA protects an employee who is presently experiencing addiction to lawfully used opioids. The guidance states that an employer may not deny

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employment to an applicant or terminate the employment of a current employee solely because the employee is in a MAT program (reflected by a valid prescription), unless the employee “cannot do the job safely and effectively” or is “disqualified under another federal law.” If the employer believes that an employee’s legal opioid use could present a safety risk or hinder effective job performance, the employer may be required to engage in an interactive process and provide a reasonable accommodation that addresses those concerns if it is not an undue hardship on the employer. As is true under the ADA generally, the guidance expressly provides that “an employer never has to lower production or performance standards, eliminate essential functions (fundamental duties) of a job, pay for work that is not performed, or excuse illegal drug use on the job as a reasonable accommodation.”

Third, with respect to employee drug testing, the guidance recommends that an employer give any employee subject to drug testing “an opportunity to provide information about lawful drug use that may cause a drug test result [to indicate the presence of opioids].” For example, before administering an employee drug test, an employer might ask whether an employee takes medication that could cause a positive result, or it might subsequently “ask all [employees] who test positive for an explanation.” The guidance does not alter the general rule that a positive test result indicating illegal drug use bars an employee from the ADA’s protections.

The guidance contains a separate but related document directed to health care providers, whose submissions may be critical to the interactive process between an employer and an employee. Specifically, the guidance recommends that health care providers explain, in plain language, the following:

- The provider’s “professional qualifications and the nature and length of [his or her] relationship with the patient”
- “The nature of the patient’s medical condition. If the patient needs an accommodation because of an underlying medical condition, or because of an opioid medication’s side effects, [the provider] should identify the underlying condition,” but if the patient asks the provider “not to reveal that his or her problems at work are due to opioid use or an underlying condition related to opioid use, the employer might be satisfied with a more general description of the individual’s medical status (e.g., that he or she is being ‘treated for addiction’ or has a mental health condition).”
- “The patient’s functional limitations in the absence of treatment”
- “The need for a reasonable accommodation,” with an explanation of “how the patient’s medical condition makes changes at work necessary”
- Suggested accommodations

The guidance for health care providers states that if an employer inquires as to whether an employee would pose a safety risk due to opioid use, it is not enough for a provider to simply furnish the employer with a list of restrictions such as “no operating heavy machinery.” Rather, the provider “should describe relevant medical events or behaviors that could occur on the job (e.g., a loss of consciousness or nausea), and state the probability that they will occur.” The guidance also states that “[w]here relevant, [a provider may] consider and assess any risks [the] patient’s condition may present in light of the type of work [the] patient performs on a day-to-day basis; the type of equipment he or she uses; his or her access to harmful objects or substances; any safeguards in place at the worksite; the type of injury or other harm that may result if one of the identified medical events or behaviors occurs; and the likelihood that injury or other harm would in fact occur as a result of the event or behavior.”

While the guidance does not modify the EEOC's position with regard to drug addiction under the ADA, it provides timely information as to the employer's and the employee's rights and obligations when an employee has a current opioid addiction. An employee's use of MAT, in particular, may require a heightened evaluation of issues relative to drug testing, safety, and reasonable accommodation.

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