

Drug Addiction and the Americans with Disabilities Act

Is drug addiction a disability under the ADA?

Current illegal users of drugs are not "individuals with disabilities" under the ADA. However, persons 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 (EEOC, 1992).

A person who casually used illegal drugs in the past, but did not become addicted is not an individual with a disability based on the past drug use. For a person to be "substantially limited" because of drug use, s/he must be addicted to the drug (EEOC, 1992).

Individuals who are not illegally using drugs, but who are erroneously perceived as being addicts and as currently using drugs illegally, are protected by the ADA (EEOC, 1992).

What does "illegal" drug use mean?

The illegal use of drugs includes the use, possession, or distribution of drugs that are unlawful under the Controlled Substances Act. It includes the use of illegal drugs and the illegal use of prescription drugs that are "controlled substances" (EEOC, 1992).

What does "current" illegal drug use mean?

"Current" drug use means that the illegal use of drugs occurred recently enough to justify an employer's reasonable belief that involvement with drugs is an on-going problem. It is not limited to the day of use, or recent weeks or days, in terms of an employment action. It is determined on a case-by-case basis (EEOC, 1992).

Are tests for illegal drugs considered medical tests under the ADA?

No. Drug tests are not considered medical examinations, and an applicant can be required to take a drug test before a conditional offer of employment has been made. An employee also can be required to take a drug test, whether or not such a test is job-related and necessary for the business. (On the other hand, a test to determine an individual's blood alcohol level would be a "medical examination" and only could be required by an employer in conformity with the ADA) (EEOC, 1992).

While an employer may conduct tests to detect illegal use of drugs, the ADA does not prohibit, require, or encourage drug tests. Employers may comply with applicable Federal, State, or local laws regulating when and how drug tests may be used, what drug tests may be used, and confidentiality (EEOC, 1992).

If a test for illegal drugs is given to a job applicant before a job offer is made, what happens if that drug test reveals the presence of legally prescribed drugs?

If a person is excluded from a job because the employer erroneously "regarded" him/her to be an addict currently using drugs illegally when a drug test revealed the presence of a lawfully prescribed drug, the employer would be liable under the ADA. To avoid such potential liability, the employer would have to determine whether the individual was using a legally prescribed drug. Because the employer may not ask what prescription drugs an individual is taking before making a conditional job offer, one way to avoid liability is to conduct drug tests after making an offer, even though such tests may be given at anytime under the ADA. Because applicants who test positive for illegal drugs are not covered by the ADA, an employer can withdraw an offer of employment on the basis of illegal drug use (EEOC, 1992).

If the results of a drug test indicate the presence of a lawfully prescribed drug, such information must be kept confidential, in the same way as any medical record. If the results reveal information about a disability in addition to information about drug use, the disability-related information is to be treated as a confidential medical record (EEOC, 1992).

Can an employer refuse to hire an applicant who has a history of illegal drug use?

Yes, in some situations. An employer can refuse to hire a person with a past history of illegal drug use, even if the person no longer uses drugs, in specific occupations, such as law enforcement, when an employer can show that this policy is job-related and consistent with business necessity (EEOC, 1992).

An employer also may refuse to hire an individual with a history of illegal drug use if the employer can demonstrate that the individual poses a "direct threat" to health or safety because of the high probability that s/he would return to the illegal drug use. The employer must be able to demonstrate that such use would result in a high probability of substantial harm to the individual or others that could not be reduced or eliminated with a reasonable accommodation. Examples of accommodations in such cases might be to require periodic drug tests, to modify job duties, or to provide increased supervision (EEOC, 1992).

Does the ADA restrict workplace programs to combat the use of drugs?

No. The ADA does not interfere with programs to combat the use of drugs in the workplace. The Act specifically provides that an employer may prohibit the use of drugs in the workplace and require that employees not be under the influence of drugs in the workplace (EEOC, 1992).