
Drug Testing and the ADA, Commonly Asked Questions (Part 1)

Does the Americans with Disabilities Act (ADA) protect people with substance abuse disorders?

The ADA does not protect anyone who is shown to be using illegal drugs currently.

What is considered illegal drug use?

The use, possession, or distribution of drugs that are unlawful under the Controlled Substances Act. It includes the misuse of prescription drugs that are “controlled substances”. The illegal use of drugs does not include drugs taken under supervision of a licensed health care professional, including experimental drugs for people with AIDS, epilepsy, or mental illness.

Are recovering drug addicts covered by the ADA?

Yes. In general, a person with a drug addiction who is currently in a drug rehabilitation program or has successfully completed rehabilitation and has not used drugs illegally for some time is covered by the ADA. Rehabilitation programs can include inpatient and outpatient substance abuse programs. The ADA also protects a person who has a history of addiction or if she/he is mistakenly regarded by the employer as having a drug addiction. However, an employer may be able to fire or refuse to hire a person with a recent history of illegal drug use, if positions must be required by law to be tested or must be “safety sensitive” under the federal court interpretations. For a person to be protected as a person with a disability, she/he must have an addiction rather than have been a casual drug user.

What does current drug use mean?

An individual will be considered a current drug user under the ADA if a drug test correctly indicates

that the individual is currently engaging in the illegal use of a controlled substance at a legally detectable level. These are generally questions to be resolved by the MRO or a drug abuse expert. Therefore, supervisors should consult with HR and or the County attorney before using this information as part of a “reasonable suspicion” decision.

Can an employer require an applicant or employee to take a drug test?

Yes. Generally, an employer may, under the ADA, conduct drug tests to detect illegal use of drugs. A governmental employer such as a county, state, city, or community college district or school district may not require a drug test without an individualized suspicion of illegal drug use by that employee.

Although an employer may not require an applicant to pass a medical examination prior to a job offer, drug tests are not considered medical examinations, and an applicant can be required to take a drug test before the employer has offered to hire the applicant. On the other hand, a test to determine the blood alcohol of an individual would be considered a medical examination and can only be required by an employer after a job offer under special conditions.

The 10th Circuit Court of Appeals found that a resort operating in Colorado with over 500 employees violated the ADA with its drug and alcohol policy. The policy required all employees to report all prescription drugs that were “present in their body system” and only allowed employees to use medication if that employee had reported

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and received approval by the supervisor. This policy violated the ADA because it required disclosure of medical information without proving it was necessary for business or related to the specific job the individual was performing. Roe v. Cheyenne Mountain Conference Resort, Inc. (10th Cir. 1997)

Are individuals who are properly prescribed medications required to inform the prospective employer of their medication prior to the drug test and/or hiring?

No. Under the ADA, an applicant who is taking properly prescribed medication is not required to disclose this information to his/her prospective employer. In addition, an employer is not permitted to ask questions concerning any medications that an applicant is taking or has taken in the past. If a person tests positive for illegal drug use, an employer must offer the employee or applicant an opportunity to explain a positive result, such as lawful use of a controlled substance or other treatment that might cause a false positive test result. On the other hand, if an applicant voluntarily discloses this information at the time of the drug test, it may avoid any misunderstandings concerning positive results from a drug-screening test between the employee and his/her employer. On a job application or in an interview the following questions are not permitted under the ADA:

- Are you currently a drug user?
- Have you ever taken illegal drugs in the past?
- Have you ever misused properly prescribed medications in the past?
- Have you ever been hospitalized for

substance abuse treatment?

- Have you ever undergone substance abuse treatment?
- Did you use drugs casually or were you addicted?

What This Means For Counties

These questions emphasize the need for counties to be aware of the policies affecting their treatment of employees under their supervision.

It is more important than ever that supervisors be alert to avoiding potential claims for violating statutes of the ADA.

For more information, contact CTSI at 303-861-0507.