
Drug Testing and the ADA, Commonly Asked Questions (Part 2)

Can an employer terminate an employee who is currently engaging in the illegal use of drugs?

Yes. An employer may refuse to hire an applicant or discharge or discipline an employee based upon a test result that indicates the illegal use of drugs.

Are the results of a drug test confidential?

Yes. Under Colorado law the employee has the right to a copy of the written results of his/her test. The prospective employer must keep all information received through a substance abuse testing program confidential.

A drug test may indirectly reveal that an individual is HIV positive, has epilepsy or diabetes because a prescribed medicine used to treat a particular condition shows up in the test. Under the Americans with Disabilities Act (ADA), an employer who obtains information about disabilities or medical conditions through drug testing is also required to treat this information confidentially under the ADA. In each instance, it is a duty of the supervisor, manager or employee who has access to the confidential medical information to keep it private and only use it for the work-related purpose for which it is known.

What actions can an employer take based on positive results of a drug test?

In Colorado, an employer covered by state law can discipline or terminate the employee if the results are positive for detectable limits of illegal drugs. The employer must have a written policy that has been distributed to employees stating what tests an employee may be subject to and what action the

employer may take if test results are positive. Neither Colorado nor federal law mandates any particular action, but allows the employer to choose the action she/he will take.

Does the ADA protect people who are recovering alcoholics?

A person who is an alcoholic is an individual with a disability under the ADA and may be entitled to consideration of reasonable accommodation, if she/he is qualified to perform the essential functions of a job. However, an employer may discipline, discharge or deny employment to a person who is an alcoholic and whose use of alcohol adversely affects job performance or conduct to the extent that she/he is not qualified to perform the essential functions of a job or who drinks alcohol during work hours. This would be demonstrated by a positive alcohol test at legally established detectable limits.

Can employers make workplace rules regarding alcohol or illegal drug use?

Yes. The Act specifically provides that employers may: (1) prohibit the use of drugs and alcohol in the workplace; (2) require that employees not be under the influence of alcohol or drugs in the workplace; and (3) require that employees who illegally use drugs or alcohol meet the same qualification and performance standards applied to other employees.

Can people who have alcoholism be held to the same performance standards as their co-workers?

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Yes. Employees who have alcoholism and do not perform up to the standards required by their employers can be discharged from their employment. However, an employer would violate the ADA if she/he treated an employee with alcoholism more harshly than she/he treated other employees for the same misconduct. An employer must make reasonable accommodations for employees

Must employers provide substance abuse rehabilitation to recovering alcoholics or drug users?

No. Many employers have established employee assistance programs for employees who abuse drugs or alcohol that are helpful to both the employee and employer. However, the ADA **does not require** an employer to provide an opportunity for rehabilitation in place of discipline or discharge.

How Do I Know if An Employee is Protected by the ADA?

Generally, a line supervisor will NOT know if an employee has a medical condition, takes prescription drugs, or has a health condition that mimics (looks or appears like) illegal drug use or alcohol use. For this reason, supervisors may refer any employee to reasonable suspicion testing once those standards have been met and verified, by two separate trained detectors.

For the ADA to apply to an employment situation each of the following has to be true:

- the employer is a covered employer;
- the employee or applicant has a disability according to the ADA;

- the employee or applicant is qualified to perform the job; and
- the employer discriminates against an applicant or employee on the basis of disability.

If an employee verbally raises an objection based on the alleged legal use of prescription drugs, past illegal drug addiction (not current addiction and not marijuana use) or current alcoholism that information should be passed, in writing, to the drug lab and HR, along with the reasonable suspicion checklist for medical assessment by the MRO and for HR assessment by HR and/or the appropriate legal counsel.

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.