

EEOC Issues Guidance on Opioid Use and Accommodation in the Workplace

3 min read

Aug 14, 2020

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The U.S. Equal Employment Opportunity Commission (EEOC) issued [two technical assistance documents](#) on opioid-related disability issues and reasonable accommodation. [The first document](#) (Guidance) employs a question and answer format and focuses primarily on typical questions employees may ask, although employers can also use it as a useful guide when dealing with the illegal use of opioids, the lawful use of prescribed opioids, employees who have a history of opioid use or abuse, and the accommodation responsibilities in each instance. [The second document](#) offers guidance to healthcare providers tasked with providing documentation for opioid-using patients seeking accommodations.

Employers dealing with opioid use in the workplace have the right to assess whether the use is pursuant to a prescription, a medically-assisted treatment (MAT) program, or unlawful use, which includes the non-prescribed abuse of controlled substances, including codeine, oxycodone, and other opioids.

The Guidance touches on three important subjects. First, it clarifies that employers are able to terminate employees for the unlawful use of opioids, even if there are no performance or safety problems. The Guidance also recognizes that other federal statutes (typically safety or transportation-related) may require disqualification from employment due to the unlawful use of opioids. Second, the Guidance focuses on the scope of the accommodation obligation on the part of employers. Finally, it identifies common accommodation options available to employees and employers.



Notably, the Guidance makes it clear that employees lawfully taking opioids because they have a prescription, are entitled to reasonable accommodation, so long as it does not pose a significant cost or an unreasonable burden

on the operations of the employer or fellow employees. Similarly, the accommodation obligation attaches to an employee's participation in an MAT program—or if the employee has a history of opioid use—but is not currently using the drugs unlawfully.

Assuming an individual has a history of opioid use or is presently lawfully using opioids, reasonable accommodations may include different break or work schedules, changes in shift assignment, transfer to another position, or even temporary leave with job protection. While medical issues that are transitory or temporary in nature generally do not qualify as disabilities, the Guidance suggests that a medical condition does not need to be permanent or stop an individual from working to become an ADA disability; many conditions that cause significant pain prompt doctors to prescribe opioids.

It is the employee's obligation to seek an accommodation, but it is important for employers to note that they cannot ignore open issues related to opioid use. The Guidance suggests that employers may require employees to put an accommodation request in writing, complete forms, and generally describe how work is affected by the disability. Employers also have the right, according to the Guidance, to request letters from a health care provider that identify the underlying disability requiring the opioid prescription.

Significantly, employers do not have to excuse poor job performance, even if it is caused by a medical condition or treatment for a medical condition. In the Guidance, employees are advised to ask for a reasonable accommodation before problems occur or worsen. The Guidance also discusses what occurs when the employee and the employer disagree over the appropriate accommodation. Further, the Guidance clarifies that employers must have objective evidence that an employee cannot perform the job or may pose a significant safety risk, even with a reasonable accommodation. It is the employer's obligation to establish the factual basis for its conclusions.

Although this Guidance is issued pursuant to the Americans With Disabilities Act (ADA), employers should also be mindful of obligations they might have under the Family Medical Leave Act (FMLA), which deals with serious health conditions—as opposed to disabilities. Typically, state and local laws also have disability or handicap-related provisions which need to be addressed. Many state and local laws also have different evidentiary standards and definitions of disabilities or medical conditions. In order to better understand their rights and obligations when dealing with an employee lawfully using opioids, employers should consult their employment counsel

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