



EEOC GUIDELINES FOR DRUG AND ALCOHOL

RELATED DISABILITIES

Under the Americans with Disabilities Act (ADA), there has been some confusion as to what employers may or may not ask *applicants* regarding alcohol and other drug addiction. Drug addicts and alcoholics are considered disabled, and therefore, protected. However, the ADA does allow an exception for *current* illicit drug users or alcoholics whose use prevents the performance of essential job functions. The EEOC, in issuing an Enforcement Guidance Memorandum, clarifies what an employer may ask job applicants. It should be noted that an employer may not conduct medical examinations (alcohol tests) of applicants until *after* a conditional job offer has been extended. Tests for illicit drugs are not considered medical examinations, but tests for alcohol are considered medical examinations.

The following excerpts from the EEOC Guidance on Preemployment Inquiries Under the Americans with Disabilities Act were issued October 10, 1995.

- **May an employer ask applicants about current illegal use of drugs?**

Yes. (Current illicit drug use not protected under ADA)

- **May an employer ask applicants about lawful drug use?**

No, if the question is likely to elicit information about a disability. Employers should know that many questions about current or prior lawful drug use are likely to elicit information about a disability, and are therefore impermissible at the pre-offer stage.

Example: "What medications are you currently taking?" or "Have you ever taken AZT?" would certainly elicit information about whether an applicant has a disability.

- **May an employer ask about lawful drug use if administering a test for illegal use of drugs?**

Only if an applicant tests positive for illegal drug use. (To validate or explain a positive test result if other than the illegal use of drugs).

Example: If an applicant tests positive for use of a controlled substance, the employer may lawfully ask "What medications have you taken that might have resulted in a positive test result? Are you taking this medication under a lawful prescription?"

Suggestion to employers: Use a Medical Review Officer (MRO) to review all confirmed positive test results as a means to avoid improper questioning of employees in the event of a positive drug test.

- **May an employer ask applicants about prior illegal drug use?**

Yes, provided that the particular question does not elicit information about a disability (past addiction) to illegal drugs or [other] controlled substances [prescription drugs]. Past casual use is not a covered disability. Therefore, the question is fine as long as it does not go to past drug addiction.

Example: An employer may ask, "Have you ever used illegal drugs?"; "When is the last time you used illegal drugs?"; or "Have you used illegal drugs in the last six months?"

Example: An employer may not ask, "How often did you use illegal drugs in the past?"; "Have you ever been addicted to drugs?"; "Have you ever been treated for drug addiction?"; or "Have you ever been treated for drug abuse?"

Suggestion to employers: While the above examples suggest that such questions are permissible, it may

not be advisable to ask about prior illegal drug use.

- **May an employer ask applicants about their drinking habits?**

Yes, unless the particular question is likely to elicit information about alcoholism.

Example: An employer may ask "Do you drink alcohol?", or "Have you been arrested for driving under the influence?"

Example: An employer may not ask, "How much alcohol do you drink?", or "Have you ever participated in an alcohol rehabilitation program?"

- **May an employer give alcohol tests to applicants?**

No. [Ed. note: Employers can require *post-offer* alcohol tests.]