DRUG USE UNDER THE AMERICANS WITH DISABILITIES ACT (ADA)

Joyce Walker-Jones
Office of Legal Counsel
U.S. Equal Employment Opportunity Commission
CURRENT ILLEGAL DRUG USE

• Does not protect individual who is “currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use”

• Former drug user/addict who is no longer engaging in the illegal use of drugs or has otherwise been rehabilitated and is no longer engaging in such use, is participating in a supervised rehabilitation program and is no longer engaging in such use, or is erroneously regarded as engaging in such use may be protected

• **Critical question:** What constitutes “current use”? 
ILLEGAL DRUG USE

- Defined by the Controlled Substances Act
- Inappropriate use of otherwise valid prescription is considered illegal use under the ADA
REASONABLE ACCOMMODATION

Employer may have to provide a change or adjustment where employee:

• Has underlying medical condition for which he’s taking opioids (e.g., substantially limiting chronic back pain)
• Is experiencing side effects from lawfully prescribed opioid medication
• Has a comorbid condition (e.g., major depressive disorder, PTSD)
• Is in a medication assisted treatment program
Joyce Walker-Jones
Senior Attorney Advisor
Office of Legal Counsel, EEOC
Joyce.Walker-Jones@eeoc.gov
(202)663-7031
Prescription Drugs

• Generally, prescribed drugs when used as directed by medical professional will not deprive individual of protection under the AD

• Employers may prohibit illegal use of prescription drugs and maintain policies prohibiting abuse of prescription drugs as long as policy is narrowly tailored not to encroach on employees’ rights

• Policies prohibiting all medications likely will violate the ADA as do tests for the illegal use of drugs that collect information on legal prescription use