

**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

CONTACT INFO

Joyce Walker-Jones

Senior Attorney Advisor

Office of Legal Counsel, EEOC

Joyce.Walker-Jones@eeoc.gov

(202)663-7031

GENERAL PRINCIPLES (CONT'D)

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