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EEOC Issues Guidance On Opioid Use By Employees

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The Equal Employment Opportunity Commission (EEOC) issued two technical assistance documents this week concerning opioid use by employees and accommodation issues under the Americans with Disabilities Act (ADA). The two documents are not binding and do not make any changes to existing law. Rather, they are meant to “provide clarity to the public regarding existing requirements under the law or agency policies.”

The first document provides [information for employees](#), and the second document provides [information for healthcare providers](#). However, employers would be well served to review both documents, as they provide an understanding of how employers should handle opioid-related accommodations.

Opioids include prescription drugs such as codeine, morphine, oxycodone (OxyContin, Percodan, Percocet), hydrocodone (Vicodin, Lortab, Lorcet), and meperidine (Demerol), as well as illegal drugs like heroin. They also include buprenorphine (Suboxone or Subutex) and methadone, which can be prescribed to treat opioid addiction.

The EEOC documents clarify that the ADA allows employers to fire employees or take other adverse employment actions based on illegal use of opioids, regardless of whether an employee exhibits performance problems. However, if an employee is using opioids legally pursuant to a prescription, including a prescription for opioid addiction, employers may not take adverse action unless they first consider whether the employee can perform safely

and effectively.

Healthcare providers may help determine whether opioid use would pose a safety risk. Safety concerns will only justify a suspension of duties or other adverse action if the risk rises to the level of a direct threat, which means a significant risk of substantial harm to the employee or others that cannot be eliminated or reduced to an acceptable level with a reasonable accommodation. The EEOC document for healthcare providers states that the providers should describe relevant medical events or behaviors that could occur on the job, along with the probability that they will occur.

If an employer determines that an employee's legal use of opioids will interfere with the employee's safe and effective job performance, the employer should provide a reasonable accommodation to the employee if possible, including potentially changing the employee's work schedule to accommodate treatment, transferring the employee to another position, or holding the employee's position open while the employee takes leave. Employers must also provide reasonable accommodations to employees who have recovered from opioid addiction but need an accommodation to prevent relapse, such as time off to attend a support group meeting.

The EEOC guidance reminds employers that legal opioid use related to a disability, including opioid addiction, must be accommodated under the ADA. Further, the guidance explains that determination of a safety risk must be based on evidence, potentially including information from a healthcare provider.