



Accommodation and Compliance Series

Employees with Drug Addiction

Job Accommodation Network
PO Box 6080
Morgantown, WV 26506-6080
(800)526-7234 (V)
(877)781-9403 (TTY)
jan@jan.wvu.edu
www.jan.wvu.edu



A service of the U.S. Department of Labor's Office of Disability Employment Policy

Preface

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Authored by Linda Carter Batiste, J.D. Updated 09/05/08.



JAN'S ACCOMMODATION AND COMPLIANCE SERIES

Introduction

JAN's Accommodation and Compliance Series is designed to help employers determine effective accommodations and comply with Title I of the Americans with Disabilities Act (ADA). Each publication in the series addresses a specific medical condition and provides information about the condition, ADA information, accommodation ideas, and resources for additional information.

The Accommodation and Compliance Series is a starting point in the accommodation process and may not address every situation. Accommodations should be made on a case by case basis, considering each employee's individual limitations and accommodation needs. Employers are encouraged to contact JAN to discuss specific situations in more detail.

For information on assistive technology and other accommodation ideas, visit JAN's Searchable Online Accommodation Resource (SOAR) at <http://www.jan.wvu.edu/soar>.

Information about Drug Addiction

How prevalent is drug addiction?

According to the 2003 National Survey on Drug Use and Health, an estimated 21.6 million persons aged 12 or older in 2003 were classified with substance dependence or abuse (9.1 percent of the total population). Of these, 3.1 million were classified with dependence on or abuse of both alcohol and illicit drugs, 3.8 million were dependent on or abused illicit drugs but not alcohol, and 14.8 million were dependent on or abused alcohol but not illicit drugs. Of the 6.8 million persons classified with dependence on or abuse of illicit drugs, 4.2 million were dependent on or abused marijuana, 1.5 million were dependent on or abused cocaine, and 1.4 million were dependent on or abused pain relievers (Substance Abuse and Mental Health Services Administration, 2004).

Among workers, 7.8 percent reported illicit drug use in the past month, and 1.9 percent were dependent or abusing illicit drugs in the past year. The rates of past month substance use were highest among workers aged 18 to 25 years, and declined with older age groups. Workers who reported past month illicit drug use were more likely than those who did not report such use to say that: they had more than three employers in the past year (5.7 percent vs 2.3 percent), they had missed work for more than two days in the past month due to illness or injury (11.6 percent vs. 6.5 percent), and they had skipped work more than two days in the past month (4.4 percent vs. 1.6 percent) (Substance Abuse and Mental Health Services Administration, 2003).

What is drug addiction?

Drug addiction is a chronic, relapsing, and treatable disease. Addiction begins with a conscious choice to use drugs, but addiction is not just "a lot of drug use." Recent



scientific research provides overwhelming evidence that not only do drugs interfere with normal brain functioning creating powerful feelings of pleasure, but they also have long-term effects on brain metabolism and activity. At some point, changes occur in the brain that can turn drug abuse into addiction. Those addicted to drugs suffer from a compulsive drug craving and usage and cannot quit by themselves (National Institute on Drug Abuse, n.d.a).

How can you tell if an employee is addicted to drugs?

The following are some of the behavioral characteristics that may occur with drug addiction. Note that these behavioral characteristics do not always indicate drug addiction, but may warrant further investigation.

- Absenteeism – absences without notification and an excessive use of sick days
- Frequent disappearances from the work site, long unexplained absences, improbable excuses
- Unreliability in keeping appointments and meeting deadlines
- Work performance that alternates between periods of high and low productivity
- Mistakes made due to inattention, poor judgment, and bad decisions
- Confusion, memory loss, and difficulty concentrating or recalling details and instructions
- Ordinary tasks require greater effort and consume more time
- Interpersonal relations with coworkers suffer
- Rarely admits errors or accepts blame for errors or oversights
- Progressive deterioration in personal appearance and hygiene
- Wearing long sleeves when inappropriate
- Personality change - mood swings, anxiety, depression, lack of impulse control, suicidal thoughts or gestures
- Increasing personal and professional isolation

(U.S. Department of Justice, Drug Enforcement Administration, n.d.).

Can drug addiction be treated?

Yes. A variety of approaches are used in treatment programs to help patients deal with cravings and possibly avoid drug relapse. Through treatment that is tailored to individual needs, individuals can learn to control their condition and live relatively normal lives (National Institute on Drug Abuse, n.d.a). There are several types of drug abuse treatment programs. Short-term methods last less than six months and include residential therapy, medication therapy, and drug-free outpatient therapy. Longer term treatment may include, for example, methadone maintenance outpatient treatment for opiate addicts and residential therapeutic community treatment (National Institute on Drug Abuse, 2008).

Drug Addiction and the Americans with Disabilities Act

Is drug addiction a disability under the ADA?

Current illegal users of drugs are not "individuals with disabilities" under the ADA. However, persons addicted to drugs, but who are no longer using drugs illegally and are receiving treatment for drug addiction or who have been rehabilitated successfully, are protected by the ADA from discrimination on the basis of past drug addiction (EEOC, 1992).

A person who casually used illegal drugs in the past, but did not become addicted is not an individual with a disability based on the past drug use. For a person to be "substantially limited" because of drug use, s/he must be addicted to the drug (EEOC, 1992).

Individuals who are not illegally using drugs, but who are erroneously perceived as being addicts and as currently using drugs illegally, are protected by the ADA (EEOC, 1992).

What does "illegal" drug use mean?

The illegal use of drugs includes the use, possession, or distribution of drugs that are unlawful under the Controlled Substances Act. It includes the use of illegal drugs and the illegal use of prescription drugs that are "controlled substances" (EEOC, 1992).

What does "current" illegal drug use mean?

"Current" drug use means that the illegal use of drugs occurred recently enough to justify an employer's reasonable belief that involvement with drugs is an on-going problem. It is not limited to the day of use, or recent weeks or days, in terms of an employment action. It is determined on a case-by-case basis (EEOC, 1992).

Are tests for illegal drugs considered medical tests under the ADA?

No. Drug tests are not considered medical examinations, and an applicant can be required to take a drug test before a conditional offer of employment has been made. An employee also can be required to take a drug test, whether or not such a test is job-related and necessary for the business. (On the other hand, a test to determine an individual's blood alcohol level would be a "medical examination" and only could be required by an employer in conformity with the ADA) (EEOC, 1992).

While an employer may conduct tests to detect illegal use of drugs, the ADA does not prohibit, require, or encourage drug tests. Employers may comply with applicable Federal, State, or local laws regulating when and how drug tests may be used, what drug tests may be used, and confidentiality (EEOC, 1992).



If a test for illegal drugs is given to a job applicant before a job offer is made, what happens if that drug test reveals the presence of legally prescribed drugs?

If a person is excluded from a job because the employer erroneously "regarded" him/her to be an addict currently using drugs illegally when a drug test revealed the presence of a lawfully prescribed drug, the employer would be liable under the ADA. To avoid such potential liability, the employer would have to determine whether the individual was using a legally prescribed drug. Because the employer may not ask what prescription drugs an individual is taking before making a conditional job offer, one way to avoid liability is to conduct drug tests after making an offer, even though such tests may be given at anytime under the ADA. Because applicants who test positive for illegal drugs are not covered by the ADA, an employer can withdraw an offer of employment on the basis of illegal drug use (EEOC, 1992).

If the results of a drug test indicate the presence of a lawfully prescribed drug, such information must be kept confidential, in the same way as any medical record. If the results reveal information about a disability in addition to information about drug use, the disability-related information is to be treated as a confidential medical record (EEOC, 1992).

Can an employer refuse to hire an applicant who has a history of illegal drug use?

Yes, in some situations. An employer can refuse to hire a person with a past history of illegal drug use, even if the person no longer uses drugs, in specific occupations, such as law enforcement, when an employer can show that this policy is job-related and consistent with business necessity (EEOC, 1992).

An employer also may refuse to hire an individual with a history of illegal drug use if the employer can demonstrate that the individual poses a "direct threat" to health or safety because of the high probability that s/he would return to the illegal drug use. The employer must be able to demonstrate that such use would result in a high probability of substantial harm to the individual or others that could not be reduced or eliminated with a reasonable accommodation. Examples of accommodations in such cases might be to require periodic drug tests, to modify job duties, or to provide increased supervision (EEOC, 1992).

Does the ADA restrict workplace programs to combat the use of drugs?

No. The ADA does not interfere with programs to combat the use of drugs in the workplace. The Act specifically provides that an employer may prohibit the use of drugs in the workplace and require that employees not be under the influence of drugs in the workplace (EEOC, 1992).

Accommodating Employees with Drug Addiction

(Note: People with drug addiction may develop some of these limitations, but seldom develop all of them. Also, the degree of limitation will vary among individuals. Be aware that not all people with drug addiction will need accommodations to perform their jobs and many others may only need a few accommodations. The following is only a sample of the possibilities available. Numerous other accommodation solutions may exist.)

Questions to Consider:

1. What limitations is the employee with drug addiction experiencing?
2. How do these limitations affect the employee and the employee's job performance?
3. What specific job tasks are problematic as a result of these limitations?
4. What accommodations are available to reduce or eliminate these problems? Are all possible resources being used to determine possible accommodations?
5. Has the employee with drug addiction been consulted regarding possible accommodations?
6. Once accommodations are in place, would it be useful to meet with the employee with drug addiction to evaluate the effectiveness of the accommodations and to determine whether additional accommodations are needed?
7. Do supervisory personnel and employees need training regarding drug addiction?

Accommodation Ideas:

Treatment Needs:

- Allow use of paid or unpaid leave for inpatient medical treatment
- Allow use of paid or unpaid leave or flexible scheduling for counseling or to attend support meetings

Difficulty Handling Stress:

- Provide praise and positive reinforcement
- Refer to counseling and employee assistance programs
- Allow modified daily schedule
- Allow frequent breaks
- Provide a self-paced workload
- Modify supervisory methods
- Reassign to a less stressful job



Fatigue:

- Reduce or eliminate physical exertion and workplace stress
- Schedule periodic rest breaks away from the workstation
- Allow a flexible work schedule and flexible use of leave time
- Allow work from home
- Implement ergonomic workstation design

Maintaining Concentration:

- Reduce distractions in the workplace
- Provide space enclosures or a private office
- Plan for uninterrupted work time
- Allow for frequent breaks
- Divide large assignments into smaller tasks and steps
- Restructure job to include only essential functions

Exposure to drugs in the workplace (e.g. hospitals, pharmacies):

- Provide workplace supports
- Provide extra supervision
- Reassign to a position that does not involve exposure to drugs

Situations and Solutions:

A substance abuse counselor with a history of drug addiction was having difficulty working with clients while dealing with family problems. His employer allowed him to take leave time to deal with his family problems.

A nurse with drug addiction was restricted from dispensing medication after she was caught using illegal drugs. Her employer had a policy allowing employees to participate in drug rehabilitation and return to work with a last chance agreement. When the nurse returned to work after rehabilitation, she was reassigned to a job that did not require her to dispense medication and given periodic drug tests.

A production worker in recovery from substance abuse needed to attend counseling that was only available in the evenings. His employer excused him from overtime on the days he attended counseling.

A call center employee with a history of drug addiction was having difficulty dealing with stress, especially face-to-face discussions with her supervisor about her job performance. Her supervisor agreed to change her management style, giving performance information in writing.

Resources

Job Accommodation Network

West Virginia University
PO Box 6080
Morgantown, WV 26506-6080
Toll Free: (800)526-7234
TTY: (877)781-9403
Fax: (304)293-5407
jan@jan.wvu.edu
<http://www.jan.wvu.edu>

The Job Accommodation Network (JAN) is a free consulting service that provides information about job accommodations, the Americans with Disabilities Act (ADA), and the employability of people with disabilities.

Office of Disability Employment Policy

200 Constitution Avenue, NW, Room S-1303
Washington, DC 20210
Toll Free: (866)633-7635
TTY: (877)889-5627
Fax: (202)693-7888
<http://www.dol.gov/odep/>

The Office of Disability Employment Policy (ODEP) is an agency within the U.S. Department of Labor. ODEP provides national leadership to increase employment opportunities for adults and youth with disabilities while striving to eliminate barriers to employment.

Addiction Resource Guide

P.O. Box 8612
Tarrytown, NY 10591
Direct: (914)725-5151
Fax: (914)631-8077
info@addictionresourceguide.com
<http://www.addictionresourceguide.com>

A comprehensive directory of addiction treatment facilities for substance abuse, alcoholism, drug and chemical dependencies and other addictions to help professionals and consumers find resources for dealing with addictive problems.

American Society of Addiction Medicine

4601 North Park Ave, Arcade Suite 101
Chevy Chase, MD 20815
Direct: (301)656-3920
Fax: (301)656-3815



email@asam.org

<http://www.asam.org>

The nation's medical specialty society dedicated to educating physicians and improving the treatment of individuals suffering from alcoholism and other addictions.

National Center on Addiction and Substance Abuse at Columbia University

633 Third Ave., 19th Floor

New York, NY 10017-6706

Direct: (212)841-5200

<http://www.casacolumbia.org>

CASA's mission is to inform Americans of the economic and social costs of substance abuse and its impact on their lives; Assess what works in prevention, treatment, and law enforcement; Encourage every individual and institution to take responsibility to combat substance abuse and addiction; Provide those on the front lines with the tools they need to succeed; Remove the stigma of abuse and replace shame and despair with hope.

National Clearinghouse for Alcohol and Drug Information

Toll Free: (800)729-6686

TTY: (800)487-4889

Fax: (301)486-6433

<http://www.ncadi.samhsa.gov/>

Information clearinghouse about prevention programs and research involving alcohol and other drug use.

National Institute on Drug Abuse, National Institutes of Health

6001 Executive Boulevard Room 5213

Bethesda, MD 20892-9561

Direct: (301)443-1124

information@nida.nih.gov

<http://www.nida.nih.gov>

NIDA's mission is to lead the Nation in bringing the power of science to bear on drug abuse and addiction.

Substance Abuse and Mental Health Services Administration

P.O. Box 2345

Rockville, MD 20847-2345

Toll Free: (877)726-4727

TTY: (800)487-4889

Fax: (240)221-4292

SHIN@samhsa.hhs.gov

<http://www.samhsa.gov>



Mission is to build resilience and facilitate recovery for people with or at risk for substance abuse and mental illness.

Working Partners for an Alcohol- and Drug-Free Workplace

U.S. Department of Labor

200 Constitution Avenue, Room S-2312

Washington, DC 20210

Toll Free: (202)693-5919

Fax: (202)693-5961

webwp@dol.gov

<http://www.dol.gov/workingpartners>



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This document was developed by the Job Accommodation Network, funded by a contract agreement from the U.S. Department of Labor, Office of Disability Employment Policy (DOL079RP20426). The opinions expressed herein do not necessarily reflect the position or policy of the U.S. Department of Labor. Nor does mention of trade names, commercial products, or organizations imply endorsement by the U.S. Department of Labor.

