



August 12, 2020

EEOC Issues Guidance Regarding Opioid Use and Reasonable Accommodations

On August 5, 2020 the Equal Employment Opportunity Commission (“EEOC”) issued two sets of guidance concerning opioids and reasonable accommodations under the Americans with Disabilities Act (“ADA”). The first set is aimed at employees (“Employee Guidance”), while the second set is directed to healthcare providers (“Health Care Provider Guidance”).

As defined in the Employee Guidance, “Opioids” refers to prescription drugs such as “codeine, morphine, oxycodone (OxyContin®, Percodan®, Percocet®), hydrocodone (Vicodin®, Lortab®, Lorcet®), and meperidine (Demerol®), as well as illegal drugs like heroin.” The definition also includes drugs used to treat opioid addiction such as “buprenorphine (Suboxone® or Subutex®) and methadone.”

The Employee Guidance explains that employees who legally use Opioids, who were addicted to Opioids, or who are in treatment for Opioid addiction may be entitled to reasonable accommodations under the ADA if the employee’s underlying medical condition is a covered disability under the ADA. The guidance also advises that an individual diagnosed with Opioid addiction may be considered disabled under the ADA.

Additionally, the Employee Guidance provides examples of reasonable accommodations that may be appropriate for Opioid users, such as a different break or work schedule, a change in shift assignment, or a temporary transfer to another position. However, the Employee Guidance makes clear that an employer may fire an employee for illegal opioid use or deny a request for an accommodation if the employee is using Opioids illegally.

The Employee Guidance also clarifies what an employer needs to show to remove an employee from a job for safety concerns due to Opioid use. The Employee Guidance states that the employer must have “objective evidence” that the employee poses “a significant risk of substantial harm” to remove an employee from a job.

The Health Care Provider Guidance provides information for healthcare providers on helping their patients request reasonable accommodations. It also provides what information healthcare providers should include in any request for medical documentation in connection with a reasonable accommodation request.

While the guidance documents do not create new obligations under the law, they do highlight the accommodation process and attempt to provide some clarity for the public regarding the ADA and Opioid use. Further, the publication of these documents could lead to a rise in accommodation requests for Opioid use.

If you have questions about reasonable accommodations for Opioid use, please contact your Kutak Rock attorney or any of the attorneys in the [Employment Law Group](#), and we would be happy to discuss this with you. You may also visit us at www.KutakRock.com.

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