



How Health Care Providers Can Help Current and Former Patients Who Have Used Opioids Stay Employed

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Summary: The document for Health Care Providers explains the type and form of medical information that will be useful to employers who request documentation regarding an employee's accommodation request or fitness for duty.

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ADA

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The contents of this document do not have the force and effect of law and are not meant to bind the public in any way. This document is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

A reasonable accommodation is some type of change in the way things are normally done at work, such as an altered break or work schedule (e.g., scheduling work around treatment), a change in shift assignment, or a temporary transfer to another position. These are just examples; employees are free to request, and employers are free to suggest, other modifications or changes. However, an employer never has to lower production or performance standards, eliminate essential functions (fundamental duties) of a job, pay for work that is not performed, or excuse illegal drug use on the job as a reasonable accommodation.[2]

Employers must give reasonable accommodations to job applicants and employees who need them because of a medical condition that qualifies as a “disability” under the ADA, unless doing so would impose significant difficulty or expense.[3]

2. Could a patient who is taking prescription opioids to treat pain from a medical condition get a reasonable accommodation?

If the patient’s pain requires ongoing opioid medication, the underlying medical condition likely qualifies as an ADA disability. The ADA’s definition of “disability” is different from the one used for Social Security disability benefits—having an ADA disability does not mean that someone can’t work. Conditions like cancer, muscular dystrophy, and multiple sclerosis should easily qualify, and other conditions may also qualify, like orthopedic conditions that cause pain for which someone is prescribed opioids.[4]

3. Could a patient who is addicted to opioids get a reasonable accommodation?

Opioid use disorder (OUD) is itself a diagnosable medical condition that is likely to qualify as an ADA disability.

There is an exception for people who are using heroin or opioid medication without a valid prescription—the ADA doesn’t stop employers from firing employees, denying employment to

5. Could a patient get reasonable accommodations for a medical condition related to opioid addiction?

Yes, if the related condition is an ADA disability. Common comorbid conditions such as major depression and post-traumatic stress disorder (PTSD) are disabilities, and other conditions may qualify as well. For more information on mental health conditions and the ADA, see *Depression, PTSD, & Other Mental Health Conditions in The Workplace: Your Legal Rights* at <https://www.eeoc.gov/laws/guidance/depression-ptsd-other-mental-health-conditions-workplace-your-legal-rights> and *The Mental Health Provider's Role in a Client's Request for a Reasonable Accommodation at Work* at <https://www.eeoc.gov/laws/guidance/mental-health-providers-role-clients-request-reasonable-accommodation-work>.

6. What if my patient can't return to work right now, even with a reasonable accommodation?

If your patient can't perform all the essential functions of the job safely and up to the standards required for the job, and he or she has no paid leave available, unpaid leave may be a reasonable accommodation if it helps him or her recover the ability to perform essential job functions. Your patient may also qualify for leave under the Family and Medical Leave Act (FMLA). The United States Department of Labor Wage and Hour Division enforces the FMLA. More information about this law can be found at www.dol.gov/whd/fmla.

If your patient is permanently unable to do his or her regular job, reassignment to a different job may be a reasonable accommodation if one is available.[5]

Helping Your Patients Seek Reasonable Accommodations

7. What if my patient needs to learn about the ADA and reasonable accommodation?

Because some patients may not know about the ADA, it may be helpful to refer them to EEOC resources, such as *Use of Codeine, Oxycodone, and Other Opioids: Your Employment Rights*, available at <https://www.eeoc.gov/laws/guidance/use-codeine-oxycodone-and-other-opioids-information-employees>.

8. How can I help my patient get a reasonable accommodation?

If your patient decides to ask for a reasonable accommodation, the employer may need medical documentation that will help it to decide whether the patient has an ADA disability and needs a reasonable accommodation.

You can provide that documentation. It does not need to be extensive, and you do not need to be a medical doctor to provide it. Employers are required to keep all information related to reasonable accommodation requests confidential.[6]

Documentation is most likely to support your patient's request if, using plain language, it explains the following:

- Your professional qualifications and the nature and length of your relationship with the patient. A brief statement is sufficient.
- The nature of the patient's medical condition.
 - If the patient needs an accommodation because of an underlying medical condition, or because of an opioid medication's side effects, you should identify the underlying condition.
 - If the accommodation is needed because of OUD, it is sufficient to state that the patient has been diagnosed with OUD.
 - If the patient needs an accommodation because of a comorbid condition, you should identify the comorbid condition.
 - If your patient asks you not to reveal that his or her problems at work are due to opioid use or an underlying condition related to opioid use, the employer might be satisfied with a more general description of the individual's medical status (e.g., that he or she is being "treated for addiction" or has a mental health condition).
- The patient's functional limitations in the absence of treatment. Describe the extent to which the condition would limit a "major life activity" such as walking, sleeping, lifting, concentrating, or caring for oneself, in the absence of treatment. If the effects on functioning would come and go, describe what they would be when the symptoms are at their worst. You only need to establish a substantial limitation of one major life activity.
- The need for a reasonable accommodation. Explain how the patient's medical condition makes changes at work necessary.
 - For example, explain why your patient may need a schedule change (e.g., to attend a medical appointment during the workday) or unpaid time off (e.g., to receive treatment or recover).
 - If your patient needs an accommodation to perform a particular job function, explain how the patient's symptoms—as they actually are, with treatment—make performing

the function more difficult. You can include side effects of the patient's medication if they also make work more difficult. If necessary, ask your patient for a description of his or her job duties. Limit your discussion to the specific problems in that particular job that may be helped by a reasonable accommodation.

- Suggested Accommodation(s). If you are aware of an effective accommodation, you may suggest it. Don't overstate the need for a particular accommodation in case an alternative is necessary.

The ADA does not alter your ethical or legal obligations as a health care provider. You should request a reasonable accommodation on behalf of an individual or provide an employer with medical information about the patient, only if the individual asks you to do so and authorizes the release. Again, employers are required to keep all information related to reasonable accommodation requests confidential.

9. How will the medical documentation be used?

The employer, perhaps in consultation with a health care professional, will use this information to evaluate whether to provide a reasonable accommodation, and, if so, which one. The person evaluating the request also may contact you to ask for clarification of what you have written, or provide you with additional information to consider. For example, if the requested accommodation would be too difficult or costly to provide, he or she may ask whether a different accommodation would be effective.

The information you provide can't legally be used to justify a negative employment action unless it shows that your patient is disqualified for the position under federal law, using drugs illegally, or incapable of performing essential job functions safely and competently even with a reasonable accommodation.^[7]

Safety Concerns

10. What if the employer asks whether my patient would pose a safety risk?

For a small number of jobs, federal law requires the employer to verify that its employees meet certain medical standards for safety reasons. But for most jobs, the decision to suspend someone's duties because of a disability must be based on an objective assessment of the accompanying safety risks, under actual working conditions. If an employer asks whether your patient poses a safety risk, it is likely asking you for medical information that will help it to decide whether the patient's disability creates a safety risk significant enough to justify

suspension or other adverse action under the law. 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 self or others that cannot be eliminated or reduced to an acceptable level with a reasonable accommodation.[8]

11. Is it enough to provide the employer with restrictions, such as “no operating heavy machinery”?

No. To decide if an employee poses a “direct threat,” employers need information that will help them assess the level of risk posed by a disability, taking into account the probability that harm will occur, the imminence of the potential harm, the duration of the risk, and the severity of the potential harm.[9]

12. What type of information should I provide an employer to make a proper safety determination?

You should describe relevant medical events or behaviors that could occur on the job (e.g., a loss of consciousness or nausea), and state the probability that they will occur. (If it is difficult to quantify the probability, it may still be useful to provide informal estimates, for example by saying that a loss of consciousness on the job would be “very unlikely” or “quite likely” during the next two months.) The estimates should be based on the most current available medical information, and should take into account the treatment regimen and medical history of the individual being evaluated. You should also describe any safety precautions that would reduce the chances that the medical event or behavior will occur.

Where relevant, consider and assess any risks your patient’s condition may present in light of the type of work your patient performs on a day-to-day basis; the type of equipment he or she uses; his or her access to harmful objects or substances; any safeguards in place at the worksite; the type of injury or other harm that may result if one of the identified medical events or behaviors occurs; and the likelihood that injury or other harm would in fact occur as a result of the event or behavior. If you don’t have this information but think you need it to make an accurate assessment, you should ask the employer for it.

Further Information

For general information, visit the Equal Employment Opportunity’s (EEOC’s) website (<https://www.eeoc.gov>), or call the EEOC at 1-800-669-4000 (voice), 1-800-669-6820 (TTY), or on our sign language access line at 1-844-234-5122 (ASL Video Phone).

[1] 42 U.S.C. § 12112, *et seq.*; 29 C.F.R. §§ 1630.1 – 1630.16. The various facets of nondiscrimination, reasonable accommodation, and other protections under Title I of the ADA are addressed in different sections of the statute and regulations. See, e.g., 29 C.F.R. § 1630.2(g) –(k) (current disability and record of a past disability) and 1630.9 (reasonable accommodation generally); see *also* 42 U.S.C. § 12114 (exclusions relating to current illegal use of drugs).

[2] 42 U.S.C. § 12114, 12210; 29 C.F.R. § 1630.3, 1630.16(b) and (c).

[3] 42 U.S.C. §§ 12111(10), 12112(b)(5); 29 C.F.R. §§ 1630.2(o) and (p), and 1630.9.

[4] 42 U.S.C. § 12102; 29 C.F.R. § 1630.2(g)–(k).

[5] 42 U.S.C. §§ 12111(8), 12111(9)(B); 29 C.F.R. §§ 1630.2(m)–(p).

[6] 42 U.S.C. § 12112(d); 29 C.F.R. § 1630.14(d)(4).

[7] 42 U.S.C. § 12203; 29 C.F.R. § 1630.12.

[8] 42 U.S.C. § 12113(b); 29 C.F.R. § 1630.2(r).

[9] *Id.*