

# EEOC Continues to Focus on Disability Discrimination Affecting Individuals in Drug Rehab Programs

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## **The ADA and Drug Rehabilitation Programs**

The Americans with Disabilities Act (ADA) recognizes that an employee or applicant who is currently engaging in the illegal use of drugs (prescription or otherwise) is not a “qualified individual” with a disability. Individuals, however, are protected by the ADA from discrimination on the basis of past drug addiction. A “qualified individual” may be an individual who has successfully completed a supervised drug rehabilitation program or is currently participating in a supervised rehabilitation program and is no longer engaging in illegal drug use. A rehabilitation program may be an in-patient, out-patient, or employee assistance program, or a recognized self-help program.

## **EEOC Implications**

Under 42 U.S.C. section 12117(a), the EEOC is “charged with the administration, interpretation and enforcement of Title I of the ADA.” In the last few years, the EEOC has filed various lawsuits against employers for allegedly discriminating against applicants or employees who are participants in supervised rehabilitation programs.

One recent case is illustrative. In *Equal Opportunity and Employment Commission v. Steel Painters*, (case number 1:18-cv-00303, in the U.S. District Court for the Eastern District of Texas) Steel Painters hired Matthew Kimball as a journeyman painter in September 2016. He was required to take a pre-employment drug and alcohol test a few days before beginning his new job.

When Kimball learned the drug test came back “positive,” he provided the laboratory with a copy of his prescription for methadone as well as a letter from Texas Treatment Services confirming his treatment at the center. The lab then changed the test result to “negative.”

Steel Painters’ human resources manager, however, would not let Kimball return to his job until his doctor filled out a specific form. The center told Kimball its policy was to not fill out third party forms on its patients. Even though the doctor wrote a letter detailing Kimball’s treatment and inviting the manager to call the clinic’s offices if more detailed information was needed, the human resources representative refused to call and Kimball was discharged shortly thereafter.

On June 28, 2018, the Equal Employment Opportunity Commission (EEOC) sued Steel Painters, LLC, (a painting company located in Beaumont, Texas), alleging it unlawfully discharged an employee because it regarded him as disabled and because of his disability. According to the EEOC’s complaint, Kimball sustained a shoulder and arm injury in 2012 and oxycodone was one of the prescribed medicines for managing his pain.

The complaint alleges he became addicted to the opioid pain medication, which “caused physiological and psychological effects that substantially limited, among other things, his neurological and digestive functions.” Kimball became a patient of Texas Treatment Services, a drug rehabilitation clinic, in February 2015. Since then, he has been prescribed methadone from the facility, has visited a counselor at least once per month, and has taken drug tests.

The EEOC alleges it “engaged in communications with Steel Painters to provide [them] the opportunity to remedy the discriminatory practices.” The Commission, however, deemed it was unable to reach a prelitigation settlement through its “conciliation process.”

The EEOC seeks a permanent injunction prohibiting Steel Painters from engaging in any future disability discrimination and “specifically from discriminating against workers whose disabilities necessitate the use of methadone pursuant to a supervised treatment program.” Additionally, the EEOC is seeking back pay, compensatory and punitive damages, and other relief—including rightful-place hiring, or in the alternative, front pay—on Kimball’s behalf.

### **Key Takeaways**

In a concerted effort, the EEOC is continuing to file lawsuits against employers that take adverse actions against applicants and employees who are participating in supervised medication-assisted treatment programs. Employers may want to think carefully about their treatment of applicants and employees who are using drugs for their past drug addictions. Employers may amend their written drug use policies to include clear exclusions for individuals who are using legally-obtained prescription medications in a lawful manner and train managers who evaluate candidates and employees on such matters. Further, when reviewing applicants or employees, employers may conduct individualized assessments to determine whether the applicant or

employee's lawful use of a prescription medication poses a direct threat the individual or others, and whether the individual can safely perform the essential functions of his or her position with or without reasonable accommodation.

## TOPICS

Drug Testing, Employment Law