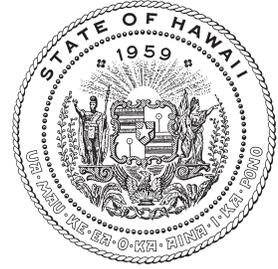


Americans with Disabilities Act - Title I

Drugs and Alcohol Use



Covered Entities

Title I of the Americans with Disabilities Act of 1990 (P.L. 101-336) applies to **covered entities**. Covered entities are private employers, state and local governments, employment agencies, labor unions, and joint labor management committees with 15 or more employees.

Drug and Alcohol Use

Title I specifically permits covered entities to ensure that the workplace is free from the illegal use of drugs and the use of alcohol, and to comply with other Federal laws and regulations regarding drug and alcohol use. At the same time, Title I provides limited protection from discrimination for recovering drug addicts and for alcoholics.



- An individual who currently engages in the illegal use of drugs is not an individual with a disability when the covered entity acts on the basis of such use.
- A covered entity may prohibit the illegal use of drugs and the use of alcohol in the workplace.
- A covered entity may conduct tests for the illegal use of drugs.
- A covered entity may discharge or deny employment to persons currently engaged in the illegal use of drugs.
- A covered entity may not discriminate against a drug addict who does not currently engage in illegal drug use and who has successfully completed rehabilitation.
- The Title I definition of an individual with a disability includes alcoholics.
- A covered entity may discipline, discharge, or deny employment to an alcoholic whose use of alcohol impairs job performance or conduct to the extent that the individual is no longer a qualified individual with a disability.
- A covered entity may require employees who use drugs or alcohol to meet the same standards of performance and conduct established for other employees.



- A covered entity may require employees to follow the Drug-Free Workplace Act of 1988 and rules established by Federal agencies pertaining to drug and alcohol use in the workplace.

Illegal and Current Use of Drugs



The **illegal use** of drugs includes the use, possession, or distribution of drugs that are unlawful under the Controlled Substances Act. The illegal use of drugs includes the use of illegal drugs and the illegal use of prescription drugs that are controlled substances.

The illegal use of drugs does not include drugs taken under supervision of a licensed health care professional, including experimental drugs for people with AIDS, epilepsy, or mental illness. Under Title I, an individual is a current drug user if a test for the illegal use of drugs correctly indicates that the individual currently engages in the illegal use of a controlled substance.

Current drug use means that the illegal use of drugs occurred recently enough to justify a covered entity's reasonable belief that an individual's involvement with drugs is an on-going problem. Current drug use is not limited to the day of use, or recent weeks or days, in terms of an employment action. A covered entity must make determinations on a case-by-case basis.

Current Use of Alcohol

Because Title I defines an alcoholic as an individual with a disability, a covered entity may have to consider providing an accommodation if the person is qualified and can perform the essential functions of a job. However, a covered entity may discipline, discharge, or deny employment to an alcoholic whose use of alcohol adversely affects job performance or conduct to the extent that the individual no longer qualifies.

Recovering Drug Addicts and Individuals Regarded as Addicts

Title I protects drug addicts who no longer use drugs illegally, drug addicts receiving treatment for drug addiction, and drug addicts who have successfully completed drug rehabilitation, from discrimination on the basis of past drug addiction. However, an individual who casually used drugs illegally in the past, but did not become addicted is not an individual with a disability based on the past drug use. That is, in order for an individual's impairment (drug use) to substantially limit a major life activity, the individual must have an addiction.

Title I protects individuals who do not illegally use drugs when covered entities erroneously perceive such individuals as addicts or as currently using drugs illegally. An individual who claims such discrimination must prove that a covered entity



discriminated based on the individual's record of addiction to drugs, or that it regarded the individual as having an addiction to drugs.

Prohibiting Drug and Alcohol Use in the Workplace

Title I does not prevent efforts to combat the use of drugs and alcohol in the workplace. A covered entity may do the following:

- Prohibit the use of drugs and alcohol in the workplace,
- Require that employees cannot be in the workplace while under the influence of drugs or alcohol, and
- Require that employees who illegally use drugs or alcohol meet the same qualification and performance standards applied to other employees.



A covered entity does not have to accept or accommodate unsatisfactory behavior such as absenteeism, tardiness, poor job performance, or accidents caused by illegal drug or any alcohol use. Title I does not require a covered entity to provide an opportunity for rehabilitation in place of disciplining or discharging such employees. However, Title I may require a covered entity to consider providing a reasonable accommodation for a rehabilitated drug addict or an alcoholic who remains a qualified individual with a disability.

In specific occupations, such as law enforcement, a covered entity can fire or refuse to hire an individual with a past history of illegal drug use, even if the individual no longer uses drugs. In such cases, the covered entity must show that the policy is job-related and consistent with business necessity and the individual does not demonstrate an extensive period of successful performance as a police officer since the time of drug rehabilitation.

A covered entity may also fire or refuse to hire an individual with a history of alcoholism or illegal drug use if it can demonstrate that the individual poses a direct threat to health or safety because of a high probability that the individual would relapse. A covered entity must demonstrate that such use would result in a high probability of substantial harm to the individual or others that it could not reduce or eliminate with a reasonable accommodation. A public entity must base an assertion of significant risk of substantial harm on an assessment of the particular individual's history of substance abuse and the specific nature of the job, not referring to general statistics regarding a relapse.

In pre-employment, pre-offer inquiries a covered entity may ask whether an applicant currently uses drugs illegally or drinks alcohol. However, it may not ask whether an applicant is a drug addict or alcoholic, or inquire whether the applicant ever entered a drug or alcohol rehabilitation program.

After a conditional offer of employment, a covered entity may ask any questions concerning past or present drug or alcohol use. However, a covered entity may not use such information to exclude an individual on the basis of a disability, unless it



can show that it based the decision on reasons related to the job or business necessity, and that the individual cannot meet the legitimate job criteria even with a reasonable accommodation.

Drug Testing



Drug tests are not medical examinations. Therefore, a covered entity may require an applicant to take a drug test before making a conditional offer of employment, whether or not such a test is job-related and necessary for the business. On the other hand, a test to determine blood alcohol level is a medical examination that must comply with Title I requirements for medical exams.

Covered entities may comply with applicable Federal, state, or local laws regulating drug tests. However, tests for illegal use of drugs may reveal the presence of lawfully used drugs. A covered entity would violate Title I if it excluded an individual from a job because it erroneously regarded the person as an addict currently using drugs illegally after a drug test revealed the presence of a lawfully prescribed drug. To avoid such liability, a covered entity would have to determine whether the individual uses a legally prescribed drug. However, because a covered entity may not ask about prescription drugs before making a conditional job offer, it can avoid liability by conducting drug tests after making an offer. Because Title I does not protect applicants who test positive for illegal drugs, a covered entity can withdraw an offer of employment on the basis of current illegal drug use.

If the results of a drug test indicate the presence of a lawfully prescribed drug or any disability-related information, a covered entity must keep such information confidential in the same manner as other medical records.



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