

# What Can Employers Ask Employees About Prescribed Drug Use?



*What can an employer ask an employee about prescription drug use? What can they ask a job applicant? Employers are free to ask about use of prescription drugs that were not prescribed for you.*



The Americans with Disabilities Act (ADA) restricts what employers can ask about use of drugs prescribed for you. The ADA applies to all employees.

## ■ *Pre-Employment Inquiries*

Under the ADA, employers **cannot** ask potential new hires:

- Questions about their history of prescribed drug use, before they offer a job to the applicant.

Employers **can** ask potential new hires:

- If they can perform all the job duties stated in the job description.
  - The applicant is required by law to notify the employer of any prescribed drugs they may be taking that have side effects which can affect their job duties. For many jobs, that includes drugs where labels say, “May Cause Drowsiness” or suggest caution when using heavy machinery (which includes driving).

## ■ *After the Job Offer, Before Employment Begins*

Once a potential new hire completes the interview process and is offered a job, an employer can ask the employee:

- Health-related questions, including questions on use of prescribed drugs.
  - This can only be done if all employees at the same job status are required to answer the same questions. These questions can be asked even if they do not relate to the job’s function.
- To get a medical examination and submit their results to the company.
  - Under the ADA, it is illegal for employers to discriminate against potential new hires based on prescribed drug use history unless the person could not start the job, even if the employer has made reasonable accommodations for that person’s position.

## ■ *During Employment*

Employers **cannot** ask employees:

- About their prescribed drug use unless the side effects of the drugs directly affect their job function.

Employers **can** ask employees:

- Health-related questions if they have learned from a third party that an employee’s job functions will be impaired due to prescribed drug use or be a direct threat to safety.
- To take a medical examination.
  - Employers do not get access to employee’s full medical records, just the outcome of the medical examination.



**DISCLAIMER:** This fact sheet is provided solely for informational purposes and is not legal advice.

## ■ Confidentiality

Employee health-related information is protected by law. Therefore, an employer must adhere to strict confidentiality regulations. An employee's prescribed drug use history **can** be shared with the employee's supervisor **if** there are work-related restrictions due to the use.

Source: United States Equal Employment Opportunity Commission. (1990). Enforcement guidance: Disability-related inquiries and medical examinations of employees under the Americans with Disabilities Act (ADA). <http://www.eeoc.gov/policy/docs/guidance-inquiries.html>. Accessed on December 4, 2012.

For further details, see the PAW issue brief Monitoring Prescription Drug Use in the Workplace: What employers Can Ask, available at [http://publichealth.hsc.wvu.edu/media/3329/paw\\_what\\_employers\\_can\\_ask\\_2\\_email\\_no-samhsa-logo.pdf](http://publichealth.hsc.wvu.edu/media/3329/paw_what_employers_can_ask_2_email_no-samhsa-logo.pdf)



The Substance Abuse and Mental Health Services Administration supports the Preventing Prescription Abuse in the Workplace Technical Assistance Center. For more information, contact [PAW-TA@PIRE.org](mailto:PAW-TA@PIRE.org). To join the PAW Listserv, visit <http://paw.dsgonline.com>, or simply scan the QR Code to the right.

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