

# JAN

Job Accommodation Network

Practical Solutions • Workplace Success

## Accommodation and Compliance Series

# Accommodation and Compliance Series: Drug Addiction

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Employment Policy, U.S. Department of Labor

## Preface

The Job Accommodation Network (JAN) is funded by a grant from the Office of Disability Employment Policy, U.S. Department of Labor. JAN makes documents available with the understanding that the information be used solely for educational purposes. The information is not intended to be legal or medical advice. If legal or medical advice is needed, appropriate legal or medical services should be contacted.

JAN does not endorse or recommend any products or services mentioned in this publication. Although every effort is made to update resources, JAN encourages contacting product manufacturers/vendors and service providers directly to ensure that they meet the intended purposes. This guarantees that the most up-to-date information is obtained.

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## **JAN'S Accommodation and Compliance Series**

### **Introduction**

JAN's Accommodation and Compliance Series is designed to help employers determine effective accommodations and comply with Title I of the Americans with Disabilities Act (ADA). Each publication in the series addresses a specific medical condition and provides information about the condition, ADA information, accommodation ideas, and resources for additional information.

The Accommodation and Compliance Series is a starting point in the accommodation process and may not address every situation. Accommodations should be made on a case by case basis, considering each employee's individual limitations and accommodation needs. Employers are encouraged to contact JAN to discuss specific situations in more detail.

For information on assistive technology and other accommodation ideas, visit JAN's Searchable Online Accommodation Resource (SOAR) at <https://AskJAN.org/soar>.

### **Information about Drug Addiction**

Drug addiction is a chronic, relapsing, and treatable disease. Addiction begins with a conscious choice to use drugs, but addiction is not just "a lot of drug use." Recent scientific research provides overwhelming evidence that not only do drugs interfere with normal brain functioning creating powerful feelings of pleasure, but they also have long-term effects on brain metabolism and activity. At some point, changes occur in the brain that can turn drug abuse into addiction. Those addicted to drugs suffer from a compulsive drug craving and usage and cannot quit by themselves.

Job accommodations may include the use of paid or unpaid leave for inpatient medical treatment or flexible scheduling for counseling or to attend support meetings. When, as a part of a job, an individual is exposed to drugs in the workplace (e.g., hospitals, pharmacies), an employer may need to implement additional workplace supports, provide extra supervision, or reassign an individual to a position that does not involve exposure to drugs. JAN's [Accommodation Solutions: Executive Functioning Deficits](#) is a publication detailing accommodations for individuals with limitations related to executive functioning. These ideas may be helpful in determining accommodations.

#### **How can you tell if an employee is addicted to drugs?**

The following are some of the behavioral characteristics that may occur with drug addiction. Note that these behavioral characteristics do not always indicate drug addiction, but may warrant further investigation.

- Absences without notification and an excessive use of sick days

- Frequent disappearances from the work site, long unexplained absences, improbable excuses
- Unreliability in keeping appointments and meeting deadlines
- Work performance that alternates between periods of high and low productivity
- Mistakes made due to inattention, poor judgment, and bad decisions
- Confusion, memory loss, and difficulty concentrating or recalling details and instructions
- Ordinary tasks require greater effort and consume more time
- Interpersonal relations with coworkers suffer
- Rarely admits errors or accepts blame for errors or oversights
- Progressive deterioration in personal appearance and hygiene
- Wearing long sleeves when inappropriate
- A personality change that includes mood swings, anxiety, depression, lack of impulse control, suicidal thoughts or gestures
- Increasing personal and professional isolation

### **Can drug addiction be treated?**

Yes. A variety of approaches are used in treatment programs to help patients deal with cravings and possibly avoid drug relapse. Through treatment that is tailored to individual needs, individuals can learn to control their condition. There are several types of drug abuse treatment programs. Short-term methods last less than six months and include residential therapy, medication therapy, and drug-free outpatient therapy. Longer term treatment may include, for example, methadone maintenance outpatient treatment for opiate addicts and residential therapeutic community treatment.

## **Drug Addiction and the Americans with Disabilities Act**

The ADA does not contain a definitive list of medical conditions that constitute disabilities. Instead, the ADA defines a person with a disability as someone who (1) has a physical or mental impairment that substantially limits one or more "major life activities," (2) has a record of such an impairment, or (3) is regarded as having such an impairment. For more information about how to determine whether a person has a disability under the ADA, see [How to Determine Whether a Person Has a Disability under the Americans with Disabilities Act Amendments Act \(ADAAA\)](#).

The following information is from Chapter VIII of the [Title I Technical Assistance Manual](#):

Current illegal users of drugs are not "individuals with disabilities" under the ADA when an employer acts on the basis of such use. However, persons addicted to drugs but who are no longer using drugs illegally and are receiving treatment for drug addiction or who have been rehabilitated successfully are protected by the ADA from discrimination on the basis of past drug addiction.

A person who casually used illegal drugs in the past but did not become addicted is not an individual with a disability based on the past drug use. For a person to be "substantially limited" because of drug use, s/he must be addicted to the drug.

Individuals who are not illegally using drugs but who are erroneously perceived as being addicts and as currently using drugs illegally are protected by the ADA.

### **What does "illegal" drug use mean?**

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

### **What does "current" illegal drug use mean?**

"Current" drug use means that the illegal use of drugs occurred recently enough to justify an employer's reasonable belief that involvement with drugs is an ongoing problem. It is not limited to the day of use or recent weeks or days in terms of an employment action. It is determined on a case-by-case basis.

### **Are tests for illegal drugs considered medical tests under the ADA?**

No. Drug tests are not considered medical examinations, and an applicant can be required to take a drug test before a conditional offer of employment has been made. An employee also can be required to take a drug test, whether or not such a test is job-related and necessary for the business. (On the other hand, a test to determine an individual's blood alcohol level would be a "medical examination" and only could be required by an employer in conformity with the ADA.)

While an employer may conduct tests to detect illegal use of drugs, the ADA does not prohibit, require, or encourage drug tests. Employers may comply with applicable Federal, State, or local laws regulating when and how drug tests may be used, what drug tests may be used, and confidentiality.

### **If a test for illegal drugs is given to a job applicant before a job offer is made, what happens if that drug test reveals the presence of legally prescribed drugs?**

If a person is excluded from a job because the employer erroneously "regarded" him/her to be an addict currently using drugs illegally when a drug test revealed the presence of a lawfully prescribed drug, the employer would be liable under the ADA. To avoid such potential liability, the employer would have to determine whether the individual was

using a legally prescribed drug. Because the employer may not ask what prescription drugs an individual is taking before making a conditional job offer, one way to avoid liability is to conduct drug tests after making an offer, even though such tests may be given at any time under the ADA. Because applicants who test positive for illegal drugs are not covered by the ADA, an employer can withdraw an offer of employment on the basis of illegal drug use.

If the results of a drug test indicate the presence of a lawfully prescribed drug, such information must be kept confidential in the same way as any medical record. If the results reveal information about a disability in addition to information about drug use, the disability-related information is to be treated as a confidential medical record.

### **Can an employer refuse to hire an applicant who has a history of illegal drug use?**

Yes, in some situations. An employer can refuse to hire a person with a past history of illegal drug use, even if the person no longer uses drugs, in specific occupations, such as law enforcement, when an employer can show that this policy is job-related and consistent with business necessity.

An employer also may refuse to hire an individual with a history of illegal drug use if the employer can demonstrate that the individual poses a "direct threat" to health or safety because of the high probability that s/he would return to the illegal drug use. The employer must be able to demonstrate that such use would result in a high probability of substantial harm to the individual or others that could not be reduced or eliminated with a reasonable accommodation. Examples of accommodations in such cases might be to require periodic drug tests, to modify job duties, or to provide increased supervision.

### **Does the ADA restrict workplace programs to combat the use of drugs?**

No. The ADA does not interfere with programs to combat the use of drugs in the workplace. The Act specifically provides that an employer may prohibit the use of drugs in the workplace and require that employees not be under the influence of drugs in the workplace.

## **Accommodating Employees with Drug Addiction**

People with drug addiction may develop some of the limitations discussed below, but seldom develop all of them. Also, the degree of limitation will vary among individuals. Be aware that not all people who are addicted to drugs will need accommodations to perform their jobs and many others may only need a few accommodations. The following is only a sample of the possibilities available. Numerous other accommodation solutions may exist.

### **Questions to Consider:**

1. What limitations is the employee experiencing?

2. How do these limitations affect the employee and the employee's job performance?
3. What specific job tasks are problematic as a result of these limitations?
4. What accommodations are available to reduce or eliminate these problems? Are all possible resources being used to determine possible accommodations?
5. Once accommodations are in place, would it be useful to meet with the employee to evaluate the effectiveness of the accommodations and to determine whether additional accommodations are needed?
6. Do supervisory personnel and employees need training?

### **Accommodation Ideas:**

### **Limitations**

#### Attentiveness/Concentration

- Products
  - Alternative Lighting
  - Applications (apps)
  - Apps for Concentration
  - Apps for Memory
  - Cubicle Doors, Shields, and Shades
  - Desk Organizers
  - Desk Pedal Exercisers
  - Electronic Organizers
  - Environmental Sound Machines / Tinnitus Maskers / White Noise Machines
  - Fidget Devices
  - Focus Enhancement
  - Full Spectrum or Natural Lighting Products
  - Noise Abatement
  - Noise Canceling Headsets
  - Noise Canceling Earbuds
  - Sound Absorption and Sound Proof Panels
  - Timers and Watches

- Calendars and Planners
- Services
  - Behavior Modification Techniques
  - Job Coaches
- Strategies
  - Color Coded System
  - Flexible Schedule
  - Job Restructuring
  - Marginal Functions
  - Modified Break Schedule
  - Task Flow Chart
  - Task Separation
  - Telework, Work from Home, Working Remotely
  - Uninterrupted "Off" Work Time
  - Verbal Cues
  - Worksite Redesign / Modified Workspace
  - Written Instructions

#### Decreased Stamina/Fatigue

- Products
  - Anti-fatigue Matting
  - Ergonomic Equipment
  - Stand-lean Stools
  - Wearable Anti-fatigue Matting
- Strategies
  - Job Restructuring
  - Periodic Rest Breaks
  - Telework, Work from Home, Working Remotely
  - Worksite Redesign / Modified Workspace

#### Executive Functioning Deficits

- Employees with Executive Functioning Deficits



## Non-compliant Behavior

- Products
  - Apps for Miscellaneous Mental Health / Control of Anger & Emotions
  - Cubicle Doors, Shields, and Shades
  - Environmental Sound Machines / Tinnitus Maskers / White Noise Machines
  - Noise Canceling Headsets
- Services
  - Behavior Modification Techniques
  - Counseling/Therapy
  - Employee Assistance Program
- Strategies
  - Disability Awareness/Etiquette Training
  - Flexible Schedule
  - Habit Monitoring
  - Job Restructuring
  - On-site Mentoring
  - Periodic Rest Breaks
  - Reminders
  - Supervisory Methods
  - Support Animal
  - Support Person
  - Telework, Work from Home, Working Remotely
  - Training Modifications
  - Worksite Redesign / Modified Workspace
  - Written Instructions

## Stress Intolerance

- Products
  - Apps for Addiction/ Alcoholism
  - Apps for Anxiety and Stress

- Environmental Sound Machines / Tinnitus Maskers / White Noise Machines
- Services
  - Behavior Modification Techniques
  - Counseling/Therapy
- Strategies
  - Flexible Schedule
  - Job Restructuring
  - Marginal Functions
  - Modified Break Schedule
  - Supervisory Methods
  - Support Animal
  - Support Person

## **Work-Related Functions**

### Stress

- Apps for Anxiety and Stress
- Behavior Modification Techniques
- Counseling/Therapy
- Environmental Sound Machines / Tinnitus Maskers / White Noise Machines
- Flexible Schedule
- Job Coaches
- Job Restructuring
- Marginal Functions
- Modified Break Schedule
- Monitor Mirrors
- Odor Control
- On-site Mentoring
- Service Animal
- Simulated Skylights and Windows
- Strobe Lights

- Supervisory Methods
- Support Animal
- Support Person
- Telework, Work from Home, Working Remotely
- Uninterrupted Work Time

#### Use Cognitive Function

- Additional Training Time / Training Refreshers
- Aide/Assistant/Attendant
- Color Coded System
- Counting/Measuring Aids
- Electronic Dictionaries
- Electronic Organizers
- Extra Time
- Fractional, Decimal, Statistical, or Scientific Calculators
- Job Coaches
- Line Guides
- Marginal Functions
- Modified Break Schedule
- On-site Mentoring
- Personal On-Site Paging Devices
- Professional Organizers
- Reassignment
- Reminders
- Service Animal
- Social Skill Builders
- Support Person
- Training Modifications
- Uninterrupted Work Time

## Situations and Solutions:

The following situations and solutions are real-life examples of accommodations that were made by JAN customers. Because accommodations are made on a case-by-case basis, these examples may not be effective for every workplace but give you an idea about the types of accommodations that are possible.

**A production worker in recovery from substance abuse needed to attend counseling that was only available in the evenings.**

His employer excused him from overtime on the days he attended counseling.

**A nurse with drug addiction was restricted from dispensing medication after she was caught using illegal drugs.**

Her employer had a policy allowing employees to participate in drug rehabilitation and return to work with a last chance agreement. When the nurse returned to work after rehabilitation, she was reassigned to a job that did not require her to dispense medication and given periodic drug tests.

**A call center employee with a history of drug addiction was having difficulty dealing with stress, especially face-to-face discussions with her supervisor about her job performance.**

Her supervisor agreed to change her management style, giving performance information in writing.

**A substance abuse counselor with a history of drug addiction was having difficulty working with clients while dealing with family problems.**

Her employer allowed him to take leave time to deal with his family problems.

## Products

There are numerous products that can be used to accommodate people with limitations. JAN's Searchable Online Accommodation Resource at <https://AskJAN.org/soar> is designed to let users explore various accommodation options. Many product vendor lists are accessible through this system; however, JAN provides these lists and many more that are not available on the Web site upon request. Contact JAN directly if you have specific accommodation situations, are looking for products, need vendor information, or are seeking a referral.

## Resources

### **Job Accommodation Network**

West Virginia University  
PO Box 6080  
Morgantown, WV 26506-6080  
Toll Free: (800) 526-7234  
TTY: (304) 293-7186  
Fax: (304) 293-5407  
[jan@askjan.org](mailto:jan@askjan.org)  
<https://askjan.org>

The Job Accommodation Network (JAN) is a free consulting service that provides information about job accommodations, the Americans with Disabilities Act (ADA), and the employability of people with disabilities.

### **Office of Disability Employment Policy**

200 Constitution Avenue,  
NW, Room S-1303  
Washington, DC 20210  
Toll Free: (866) 633-7365  
[odep@dol.gov](mailto:odep@dol.gov)  
<https://www.dol.gov/agencies/odep>

The Office of Disability Employment Policy (ODEP) is an agency within the U.S. Department of Labor. ODEP provides national leadership to increase employment opportunities for adults and youth with disabilities while striving to eliminate barriers to employment.

### **Addiction Center**

Recovery Worldwide LLC  
121 South Orange Avenue Suite 1450  
Orlando, FL 32801  
Toll Free: (877) 416-1550  
[Contact@addictioncenter.com](mailto:Contact@addictioncenter.com)  
<https://www.addictioncenter.com>

Addiction Center was founded by recovering addicts and health information writers. Their goal is to provide the most up-to-date information on addiction as well as reviews of top treatment centers across the country.

Addiction Center is owned and funded by Recovery Worldwide LLC, an organization that creates informational web properties on health and mental health-related topics. They are not a treatment center, but their network of centers across the country aims to provide outlets for people seeking help.

### **AllTreatment.com**

Toll Free: (888) 812-1137

<https://www.alltreatment.com/>

AllTreatment.com is a drug rehab center directory and substance abuse information resource. Their website is dedicated to educating users about drug and alcohol addiction. They feature a complete directory of drug addiction treatment centers, an article database about alcoholism and drug abuse, a blog about current drug news, and much more.

### **American Psychiatric Association**

1000 Wilson Blvd

Suite 1825

Arlington, VA 22209-3901

Toll Free: (888) 357-7924

Direct: (703) 907-7300

[apa@psych.org](mailto:apa@psych.org)

<https://www.psychiatry.org/>

The American Psychiatric Association is an organization of psychiatrists working together to ensure humane care and effective treatment for all persons with mental illness, including substance use disorders. It is the voice and conscience of modern psychiatry. Its vision is a society that has available, accessible quality psychiatric diagnosis and treatment.

**American Society of Addiction Medicine**

4601 North Park Ave  
Upper Arcade, Suite 101  
Chevy Chase, MD 20815  
Direct: (301) 656-3920  
Fax: (301) 656-3815  
[email@asam.org](mailto:email@asam.org)  
<https://www.asam.org/>

ASAM is dedicated to increasing access and improving the quality of addiction treatment, educating physicians and the public, supporting research and prevention, and promoting the appropriate role of physicians in the care of patients with addiction.

**Anxiety and Depression Association of America**

8701 Georgia Ave.  
Suite #412  
Silver Spring, MD 20910  
Direct: (240) 485-1001  
Fax: (240) 485-1035  
<https://adaa.org/>

ADAA is a national nonprofit organization dedicated to the prevention, treatment, and cure of anxiety and mood disorders, OCD, and PTSD and to improving the lives of all people who suffer from them through education, practice, and research.

**Brain & Behavior Research Foundation**

90 Park Avenue,  
16th Floor  
New York, NY 10016  
Toll Free: (800) 829-8289  
Direct: (646) 681-4888  
[info@bbrfoundation.org](mailto:info@bbrfoundation.org)  
<https://www.bbrfoundation.org>

The Brain & Behavior Research Foundation is committed to alleviating the suffering caused by mental illness by awarding grants that will lead to advances and breakthroughs in scientific research.

### **Centers for Disease Control and Prevention**

1600 Clifton Rd  
Atlanta, GA 30333  
Toll Free: (800) 232-4636  
<https://www.cdc.gov/>

The Centers for Disease Control and Prevention are dedicated to protecting the health and safety of people - at home and abroad, providing credible information to enhance health decisions, and promoting health through strong partnerships.

### **Clinical and Research Institute on Addictions**

1021 Main Street  
Buffalo, NY 14203-1016  
Direct: (716) 887-2566  
Fax: (716) 887-2252  
[webmaster@ria.buffalo.edu](mailto:webmaster@ria.buffalo.edu)  
<http://www.buffalo.edu/cria.html>

The Clinical and Research Institute on Addictions is a national leader in the study of substance use and misuse, addiction and treatment.

### **MedlinePlus**

8600 Rockville Pike  
Bethesda, MD 20894  
[custserv@nlm.nih.gov](mailto:custserv@nlm.nih.gov)  
<https://medlineplus.gov>

MedlinePlus is the National Institutes of Health's Web site for patients and their families and friends. Produced by the National Library of Medicine, the world's largest medical library, it brings you information about diseases, conditions, and wellness issues in language you can understand. MedlinePlus offers reliable, up-to-date health information, anytime, anywhere, for free.



**Mental Health America**

500 Montgomery Street  
Suite 820  
Alexandria, VA 22314  
Toll Free: (800) 969-6642  
Direct: (703) 684-7722  
Fax: (703) 684-5968  
<https://www.mhanational.org>

Mental Health America – founded in 1909 – is the nation's leading community-based nonprofit dedicated to addressing the needs of those living with mental illness and to promoting the overall mental health of all Americans. Their work is driven by their commitment to promote mental health as a critical part of overall wellness, including prevention services for all, early identification and intervention for those at risk, and integrated care and treatment for those who need it, with recovery as the goal.

**National Center for Biotechnology Information**

8600 Rockville Pike  
Bethesda, MD 20894  
[pubmedcentral@ncbi.nlm.nih.gov](mailto:pubmedcentral@ncbi.nlm.nih.gov)  
<https://www.ncbi.nlm.nih.gov/>

The National Center for Biotechnology Information advances science and health by providing access to biomedical and genomic information.

**Start Your Recovery**

<https://startyourrecovery.org/>

StartYourRecovery.org provides helpful information for people who are dealing with substance use issues — and their family members, friends, and co-workers.

## **Substance Abuse and Mental Health Services Administration**

1 Choke Cherry Road  
Rockville, MD 20857  
Toll Free: (877)726-4727  
[SAMHSAInfo@samhsa.hhs.gov](mailto:SAMHSAInfo@samhsa.hhs.gov)  
<https://www.samhsa.gov/>

The Substance Abuse and Mental Health Services Administration (SAMHSA) is the agency within the U.S. Department of Health and Human Services that leads public health efforts to advance the behavioral health of the nation. SAMHSA's mission is to reduce the impact of substance abuse and mental illness on America's communities.

## **Suicide Prevention Resources**

<https://afsp.org/suicide-prevention-resources>

Visit the <https://afsp.org/suicide-prevention-resources> American Foundation for Suicide Prevention's website for a list of resources for suicide prevention for you or someone you know. They also provide resources supporting <https://afsp.org/mmhresources> diverse communities and <https://afsp.org/lgbtqresources> the LGBTQ community as well.

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