

  

# Mineral



## Question of the Week

JANUARY 25, 2023

### QUESTION

We have a repeat applicant whom we offered a job to in the past. This candidate failed a drug screen back then, so we rescinded the offer. Can we reject them now based on their past drug screen result?

### ANSWER

No, chances are that rejecting an applicant based on a previous drug screen will violate the Americans with Disabilities Act (ADA). The ADA prohibits employment discrimination on the basis of a disability, which includes being in recovery from substance use disorders. The ADA applies to employers with 15 or more employees, although state laws also prohibit disability discrimination in employment, and many of those laws apply at a lower employee count.

Even if you aren't subject to the ADA or a state disability discrimination law, we don't recommend excluding someone from your selection process based on their past failure of a drug screen or other pre-employment screening. Many things could have changed since the last time this candidate was in your selection process, including your own drug screening process, the candidate's personal habits, or even which drugs are legal under the law in your state. By excluding them from consideration, you could be missing out on a great candidate.

*This Q&A does not constitute legal advice and does not address state or local law.*