

Adopted and Revised January 20, 2016  
Policy 3.0  
Addendum

## **DRUG AND ALCOHOL FREE WORKPLACE POLICY**

The Americans with Disability Act covers pre-employment hiring procedures. Under the ADA, job applicants who “currently are engaging in the illegal use of drugs” are not protected under the ADA, and the Maywood Public Library District may decline to hire such applicants. On the other hand, past drug addicts are protected under the ADA and may not be discriminated against as long as they are not currently using drugs illegally and are either receiving treatment or have been rehabilitated successfully.

At the pre-offer of employment stage, the Maywood Public Library District cannot (under ADA) ask an applicant to undergo a medical examination. However, tests limited to drug screening are not medical examinations, and such tests could be required of job applicants.

As one option, the Maywood Public Library District could require all of its job applicants to undergo drug testing—which may be relatively expensive.

Alternatively, the Maywood Public Library District should determine (from the ADA “essential elements” of the various jobs within the Public Library District) which jobs are so security-sensitive and/or job safety-sensitive as to justify an “automatic” exclusion of all applicants who have a history of the illegal drug use—such as is the case with drivers of interstate buses, railroad engineers, U.S. Customs agents, etc. In this scenario, only those applicants for those particular jobs would be required to undergo drug testing.

The option of utilizing truly random drug testing for job applicants is, in our opinion, fairly risky. As far as we are aware, no federal court of review has approved random drug testing for ordinary employment situations. Also, the “randomness” of the test might be questioned where the test is administered to members of a “protected” class (under federal or Illinois non-discrimination laws). Further, if the drug test were to eliminate an applicant with an ADA disability, the Maywood Public Library District would probably have to try and prove that it did not know about the ADA disability when it requested the drug test—which may be a difficult burden of proof.

Possibly a more satisfactory option is for the Maywood Public Library District to require drug testing when one or more of the following criteria is satisfied with respect to a job applicant:

- a. The job applicant exhibited a pattern of abnormal or erratic behavior at the job interview, including, but not limited to, physical symptoms of drug use (i.e. glassy or bloodshed eyes, slurred speech, poor coordination and/or reflexes).**
- b. The Maywood Public Library District is provided information by a reliable and creditable source that the job applicant is currently engaged in the illegal use of drugs.**
- c. Direct observation of drug or narcotics use at the job interview.**

**As a practical matter, however, except in very unusual circumstances, we expect that it would be more efficient for the Maywood Public Library District to deny the job application of the individual who exhibits one or more of the foregoing criteria, than to make a job offer conditioned on passing the drug examination.**