

# Fact Sheet on Obtaining and Using Employee Medical Information as Part of Emergency Evacuation Procedures

## Introduction

In light of recent events, many employers are developing or re-evaluating emergency procedures to ensure the safe evacuation of all employees. A comprehensive emergency evacuation plan should provide for prompt and effective assistance to individuals whose medical conditions may necessitate it. Many employers have asked how the Americans with Disabilities Act (ADA) and the Rehabilitation Act affect their ability to achieve this goal.<sup>(1)</sup> Specifically, employers have asked whether they may request information to help identify individuals who might need assistance because of a medical condition and whether they can share this information with others in the workplace. As the following questions and answers demonstrate, federal disability discrimination laws do not prevent employers from obtaining and appropriately using information necessary for a comprehensive emergency evacuation plan.<sup>(2)</sup>

### 1. **May an employer ask employees whether they will require assistance in the event of an evacuation because of a disability or medical condition?**

Yes. Some employees may need assistance because of medical conditions that are not visually apparent. Others may have obvious disabilities or medical conditions but may not need assistance. Employers, therefore, are allowed to ask employees to self-identify if they will require assistance because of a disability or medical condition.

### 2. **How may an employer identify individuals who may require assistance?**

There are three ways that an employer may obtain information:

- After making a job offer, but before employment begins, an employer may ask all individuals whether they will need assistance during an emergency.
- An employer also may periodically survey all of its current employees to determine whether they will require assistance in an emergency, as long as the employer makes it clear that self-identification is voluntary and explains the purpose for requesting the information.
- Finally, whether an employer periodically surveys all employees or not, it may ask employees with known disabilities if they will require assistance in the event of an emergency. An employer should not assume, however, that everyone with an obvious disability will need assistance during an evacuation. For example, many individuals who are blind may prefer to walk down stairs unassisted. People with disabilities are generally in the best position to assess their particular needs.

An employer should inform all individuals who are asked about their need for emergency assistance that the information they provide will be kept confidential and shared only with those who have responsibilities under the emergency evacuation plan. (*See* Question 4 below.)

### 3. **May an employer specifically ask what type of assistance will be needed?**

Yes. An employer may ask individuals who indicate a need for assistance because of a medical condition to describe the type of assistance they think will be needed. One way that this can be done is by giving all employees a memo with an attached form requesting information. The employer also may have a follow-up conversation with an individual when necessary to obtain more detailed information. For example, it would be important for an employer to know whether someone who uses a wheelchair because of mobility limitations is able to walk independently, with or without the use of crutches or a cane, in an emergency situation. It also would be important for an employer to know if an individual will need any special medication, equipment, or device (e.g., an assisted wheelchair carrier strap or a mask because of a respiratory condition) in the event of an emergency. Of course, an employer is entitled only to the information necessary for it to be prepared to provide assistance. This means that, in most instances, it will be unnecessary for an employer to know the details of an individual's medical condition.

### 4. **Who is allowed to have information about employees needing assistance in an emergency?**

The ADA has provisions that require employers to keep medical information about applicants and employees confidential. These provisions, however, include an exception that allows an employer to share medical information with first aid and safety personnel. This exception would allow an employer to share information about the type of assistance an individual needs in the event of an evacuation with medical professionals, emergency coordinators, floor captains, colleagues who have volunteered to act as "buddies," building security officers who need to confirm that everyone has been evacuated, and other non-medical personnel who are responsible for ensuring safe evacuation. These individuals are entitled to the information necessary to fulfill their responsibilities under the employer's emergency evacuation plan.

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1. The ADA applies to private employers with fifteen or more employees and to state and local government employers. The Rehabilitation Act applies to most federal employers, and its substantive requirements are the same as those that apply to employers covered by the ADA.

2. The Commission previously has issued more detailed guidance on related issues concerning disability-related inquiries and medical examinations of applicants and employees. *See* Enforcement Guidance: Preemployment Disability-Related Questions and Medical Examinations Under the Americans with Disabilities Act of 1990 (October 10, 1995) and Enforcement Guidance: Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act (ADA) (July 27, 2000). These and other guidances are available on this web site.

More information on emergency preparedness for employees with disabilities can be found on the President's New Freedom Initiative Disability Direct web site <http://www.disabilities.gov/> and on the Job Accommodation Network's web site at <http://www.jan.wvu.edu/>.

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