

EEOC Guidance on Obtaining and Using Employee Medical Information As Part of Emergency Evacuation Planning

Equal Employment Opportunity guidance (found at www.eeoc.gov/facts/evacuation.html) makes clear that discrimination laws do not prevent employers from obtaining and appropriately using information required for a company emergency evacuation plan. The following questions and answers, drawn from the EEOC guidance, provide further information.

May an organization ask an employee if he will need assistance during an evacuation because of a disability or medical condition?

Yes. Some employees who do not have obvious disabilities will need assistance in the event of a workplace evacuation. Some employees with obvious disabilities may not need help. Therefore, employers may ask employees to self-identify if they require assistance.

How may employees who will require assistance be identified?

The EEOC notes that there are three ways to gather such information:

- After making a job offer, but before employment starts, an employee may be asked whether she will require assistance during an emergency.
- Employees may be surveyed periodically to determine whether they will require emergency assistance. However, employers must make clear that such self-identification is voluntary and must explain the purpose of the requests.
- Employers may also ask employees with known disabilities if they may require emergency assistance. The EEOC cautions that employers should not assume that those with apparent disabilities will need assistance during an evacuation. Employees who are asked about their possible need for assistance should also be informed that the information will remain confidential and shared only with those who have a "need to know" because of their emergency plan responsibilities.

May employees be asked specifically what type of assistance they will need?

Yes. Employees may be asked to describe the type of assistance they might need. The EEOC suggests that this could be accomplished by providing employees a form that requests specific information. The employer may also have a follow-up conversation with the employee to clarify or gather further information. However, only information required to provide assistance may be obtained (i.e., the employer would not need to know the details of the employee's medical condition).

Who may be provided the information gathered?

The ADA requires that applicant and employee medical information be kept confidential. However, the ADA does provide an exception allowing such information to be shared with first aid and safety personnel. Therefore, individuals with emergency plan responsibilities (e.g., medical personnel, emergency coordinators, security, employee “buddies,” etc, may given the information).

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