



County Technical Assistance Service

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Safety Concerns

Dear Reader:

The following document was created from the CTAS electronic library known as e-Li. This online library is maintained daily by CTAS staff and seeks to represent the most current information regarding issues relative to Tennessee county government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other e-Li material.

Sincerely,

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Safety Concerns

Reference Number: CTAS-2028

Employers can impose qualification standards intended to exclude individuals with a disability that pose a direct threat (either health or safety) to themselves or others if a reasonable accommodation can not be found. A direct threat is a significant risk of substantial harm. Before asking medical questions or arranging for a medical examination, make sure that poor job performance is being caused by a disability. If job functions are not being performed correctly, the reason may not be medical and the problem should be handled in accordance with company performance policies.

You can not refuse to hire or fire an employee because of a slightly increased or speculative risk of harm to himself or others. Under the ADA employers must make individualized decisions based on factual evidence, not assumptions or generalizations, ignorance, fear, patronizing attitudes, or stereotypes. By doing so the needs of the people with disabilities are balanced against the interests of employers in providing a safe workplace.

An employer should—

- Assess the individual's ability to safely perform the essential functions of the job based on objective evidence and medical judgement.
- Consider the duration of the risk, severity of potential harm, and the probability that harm will occur.

Do not base the decision on generalizations or unfounded fears. The harm must be serious and likely to occur and there must be no reasonable accommodation to reduce the risk.

29 C.F.R. § 1630.2(r)

Emergency Procedures under the ADA

The ADA does not prevent employers from obtaining and using employee medical information for an emergency evacuation plan. There are three different times an employer may obtain this information.

1. An employer can ask all new hires if they will require assistance during an emergency.
2. An employer can periodically ask all employees to self-identify whether they will need assistance.
3. An employer can ask an employee with a known disability if assistance is required.

An employer can ask individuals to describe what kind of assistance is required in case of an evacuation. Employees should inform their employer if a special medication, equipment, or device is needed. Employees need only share information necessary for an emergency evacuation; in most cases it won't be necessary to share details about the employee's medical condition.

Information acquired for emergency purposes is kept confidential. The ADA allows that the information may be shared with first aid and safety personnel. In the case of an emergency evacuation plan, the information should be shared with anyone who needs the information to fulfill their responsibilities under the plan.

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