

Public Health and Employee Information

Executive Overview

This document provides a brief overview of important issues related to public health agencies' authority to collect and use information about their employees to ensure their workforces' health and safety, as well as continuity of operations during an emergency. Additional details on these and other issues are contained in other fact sheets and issue briefs in the [ASTHO Public Health & Information Sharing Toolkit](#).

Public Health Authority and Information

Generally, public health agencies have broad authority to obtain and use identifiable information about members of the public for public health purposes. Their authority may also allow them to share information when necessary with other public health agencies, law enforcement or, in compelling circumstances, with the public. In contrast, public health agencies are limited in their ability to seek health-related information about their employees. As employers, public health agencies are subject to laws that protect employees from health-related inquiries and medical examinations that may result in discrimination based on disability. At the same time, public health agencies must monitor the workplace to keep it safe for employees and members of the public with whom they interact. They also have a duty to plan for emergencies to ensure an adequate workforce to carry out essential functions.

Protecting Employees from Discrimination Based on Disability

State and local public health agencies must comply with the federal Americans with Disabilities Act (ADA). ADA makes it illegal to discriminate against employees in the terms, conditions, and privileges of employment based on their actual or perceived disability or the disability of someone with whom they have a relationship. To prevent disability discrimination, employers are prohibited from asking employees questions that are likely to elicit information about a disability and from requiring medical examinations, except in limited situations that are job-related and consistent with business necessity.

Protecting the Safety and Health of Employees

Occupational safety and health standards adopted under the federal Occupational Safety and Health Act (OSH Act) apply to many, but not all, state and local public health agencies. The OSH Act requires employers to keep their workplace free of serious recognized hazards and to comply with specific standards established for certain hazards, such as exposure to hazardous materials or blood-borne pathogens. State occupational safety and health laws may apply to public health agencies in addition to, or in lieu of, federal standards. Medical surveillance may be indicated by these laws to ensure a safe and healthful workplace or to meet specific standards. ADA permits employers to obtain health-related information as required to comply with federal OSH Act standards, when applicable, and by state and local safety and health laws to the extent state and local laws are consistent with ADA. Inquiries and medical examinations are permitted if they are job-related and consistent with business necessity. An employee may be excluded from the workplace when necessary to protect the employee or others. Objective evidence must support disability-related inquiries, medical examination, and necessary exclusion. As part of a comprehensive emergency evacuation plan, ADA would also allow employers to ask employees whether they will require assistance in the event of an evacuation and, if so, what kind of assistance they will require.

Protecting the Public's Health During an Emergency

Emergency preparation requires planning to ensure an adequate workforce to manage the emergency and maintain vital services to the community. Employers need to collect information about their employees consistent with ADA. For example, although employers may survey employees about potential absences during a pandemic, employers may run afoul of ADA if their inquiries are likely to elicit information about a disability. For this reason, employers may want to ask employees if they would be unable to come to work for nonmedical reasons (such as curtailed transportation or the need to care for a child if schools or day-care centers were closed) or for medical reasons, without asking the employee to specify the reason that applies to him or her.

This document was compiled from April–November 2012 and reflects the laws and programs current then. It reflects only portions of the laws relevant to public health emergencies and is not intended to be exhaustive of all relevant legal authority. This resource is for informational purposes only and is not intended as a substitute for professional legal or other advice. The document was funded by CDC Award No. 1U38HM000454 to the Association of State and Territorial Health Officials; Subcontractor Subcontractor University of Michigan School of Public Health, Network for Public Health Law – Mid-States Region.