

Emergency Preparedness and the Workplace

I begin my testimony with these sobering studies because I believe it is important that the issue of emergency preparedness and the workplace be thought about in this broader context. We don't want an over-emphasis on emergency preparedness in the workplace to create additional reasons for employers to discriminate against qualified job applicants and workers with disabilities. I am hopeful that EEOC's work in this area will be very careful to remind employers that their own fears about how a disabled employee would fare in an emergency will rarely if ever be a justification for failing to hire a qualified job applicant or terminating a qualified worker's employment.

EEOC's litigation in *EEOC v. DuPont* involving a disabled employee who was terminated based on the employer's fears that she would be unable to evacuate safely in an emergency is a good example of how this issue can play out in a way that harms disabled employees. I commend EEOC for taking this case to trial and reinforcing the fact that a direct threat defense is a narrow defense and not something that an employer will be able to fall back on without compelling evidence of an imminent risk of substantial harm to the worker or others. I would encourage EEOC to pursue and publicize similar cases so that the employer community will be put on notice not to take the increased emphasis on emergency preparedness as a license to discriminate against qualified employees.

Moreover, I would encourage the Commission to consider issuing additional guidance on the limited nature of the direct threat defense, and the danger of employer paternalism with respect to job applicants or workers with disabilities in the aftermath of high-profile disasters. In this guidance, EEOC might want to point out the history of disabled people being excluded from lots of settings because of unfounded fears that they would be a "fire hazard" if they were allowed entrance. Employers should be warned not to exclude workers in the name of emergency preparedness anymore than they would exclude clients or customers on such a basis.