

## Office of the Secretary, Interior

## § 17.213

for leaves of absence to pursue training;

(8) Employer-sponsored activities, including those that are social or recreation; and

(9) Any other term, condition, or privilege of employment, such as granting awards, recognition and/or monetary recompense for money-saving suggestions or superior performance.

(c) A recipient's obligation to comply with this subpart is not affected by any inconsistent term of any collective bargaining agreement to which it is a party.

### § 17.211 Reasonable accommodation.

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program or activity.

(b) Reasonable accommodation may include but is not limited to: (1) Making facilities used by employees readily accessible to and usable by handicapped persons, and (2) job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, the provision of readers or interpreters, and other similar actions. This list is neither all inclusive nor meant to suggest that employers must follow all the actions listed.

(c) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a recipient's program or activity, factors to be considered include:

(1) The overall size of the recipient's program or activity with respect to number of employees, number and type of facilities, and size of budget;

(2) The type of the recipient's operations, including the composition and structure of the recipient's workforce; and

(3) The nature and cost of the accommodation needed.

(d) A recipient may not deny any employment opportunity to a handicapped employee or applicant if the basis for denial is the need to make reasonable

accommodation to the physical or mental limitations of the employee or applicant.

### § 17.212 Employment criteria.

(a) A recipient may not make use of any employment test or other selection criterion that screens out or tends to screen out handicapped persons or any class of handicapped persons unless it can be demonstrated to the Director that (1) the test score or other selection criterion, as used by the recipient, is shown to be job-related for the position in question, and (2) alternative job-related tests or criteria that do not screen out or tend to screen out as many handicapped persons are not shown by the Director to be available.

(b) A recipient shall select and administer tests concerning employment so as best to ensure that, when administered to an applicant or employee who has a handicap that impairs sensory, manual, or speaking skills the test results accurately reflect the applicant's or employee's job skills, aptitude, or whatever other factor the test purports to measure, rather than reflecting the applicant's or employee's impaired sensory, manual, or speaking skills (except where those skills are the factors that the test purports to measure).

(c) All job qualifications must be shown to be directly related to the job in question.

### § 17.213 Pre-employment inquiries.

(a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not conduct a pre-employment medical examination or make a pre-employment inquiry as to whether the applicant is a handicapped person or as to the nature or severity of a handicap. A recipient may, however, make a pre-employment inquiry into an applicant's ability to perform job-related functions.

(b) When a recipient is taking remedial action to correct the effects of past discrimination pursuant to § 17.205(a), when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally assisted program or activity pursuant to § 17.205(b), or when a recipient is taking

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affirmative action pursuant to section 503 of the Act, the recipient may invite applicants for employment to indicate whether and to what extent they are handicapped, provided that:

(1) The recipient states clearly on any written questionnaire used for this purpose, or makes clear orally if no written questionnaire is used, that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts.

(2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph (d) of this section, that refusal to provide it will not subject the applicant or employee to any adverse treatment, and that it will be used only in accordance with this subpart.

(3) The recipient must communicate with the applicant in a manner that will ensure that the applicant understands clearly the reasons for the recipient's questions.

(c) Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty, provided that: (1) All entering employees are subjected to such an examination regardless of handicap, and (2) the results of such an examination are used only in accordance with the requirements of this subpart.

(d) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records, except that:

(1) Supervisors and managers may be informed regarding restrictions on the work or duties of handicapped persons and regarding necessary accommodations;

(2) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment;

(3) Government officials investigating compliance with the Act shall be provided relevant information upon request.

**43 CFR Subtitle A (10–1–11 Edition)**

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**§ 17.216 Accessibility.**

No handicapped person shall, because a recipient's facilities are inaccessible to or unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity to which this subpart applies.

**§ 17.217 Existing facilities.**

(a) *Accessibility.* A recipient shall operate each program or activity so that when each part is viewed in its entirety it is readily accessible to and usable by handicapped persons. This paragraph does not require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

(b) *Methods.* A recipient may comply with the requirements of paragraph (a) of this section through such means as redesigning of equipment, reassignment of classes or other services to accessible buildings, assignment of aides to beneficiaries, delivery of services at alternate accessible sites, alterations of existing facilities and construction of new facilities in conformance with the requirements of §17.218, or any other methods that result in making its program or activity accessible to handicapped persons. A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with paragraph (a) of this section. In choosing among available methods for meeting the requirement of paragraph (a) of this section, a recipient shall give priority to those methods that serve handicapped persons in the most integrated setting appropriate.

(c) *Small recipients.* If a recipient with fewer than fifteen employees that provides services finds, after consultation with a handicapped person seeking its services, that there is no method of complying with paragraph (a) of this section other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services whose facilities are accessible.