

in compliance with the act or this part, responding to requests for information from the Director, and taking such actions for noncompliance as are set forth in § 60-741.66 as may be ordered by the Secretary or the Director.

Subpart B—Discrimination Prohibited

§ 60-741.20 Covered employment activities.

The prohibition against discrimination in this part applies to the following employment activities:

- (a) Recruitment, advertising, and job application procedures;
- (b) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;
- (c) Rates of pay or any other form of compensation and changes in compensation;
- (d) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;
- (e) Leaves of absence, sick leave, or any other leave;
- (f) Fringe benefits available by virtue of employment, whether or not administered by the contractor;
- (g) Selection and financial support for training, including apprenticeships, professional meetings, conferences and other related activities, and selection for leaves of absence to pursue training;
- (h) Activities sponsored by the contractor including social and recreational programs; and
- (i) Any other term, condition, or privilege of employment.

§ 60-741.21 Prohibitions.

(a) The term *discrimination* includes, but is not limited to, the acts described in this section and § 60-741.23.

(1) *Disparate treatment*. It is unlawful for the contractor to deny an employment opportunity or benefit or otherwise to discriminate against a qualified individual on the basis of disability.

(2) *Limiting, segregating and classifying*. Unless otherwise permitted by this part, it is unlawful for the contractor to limit, segregate, or classify a job applicant or employee in a way

that adversely affects his or her employment opportunities or status on the basis of disability. For example, the contractor may not segregate employees into separate work areas or into separate lines of advancement on the basis of disability.

(3) *Contractual or other arrangements—*

(i) *In general*. It is unlawful for the contractor to participate in a contractual or other arrangement or relationship that has the effect of subjecting the contractor's own qualified applicant or employee with a disability to the discrimination prohibited by this part.

(ii) *Contractual or other arrangement defined*. The phrase *contractual or other arrangement or relationship* includes, but is not limited to, a relationship with: an employment or referral agency; a labor organization, including a collective bargaining agreement; an organization providing fringe benefits to an employee of the contractor; or an organization providing training and apprenticeship programs.

(iii) *Application*. This paragraph (a)(3) applies to the contractor, with respect to its own applicants or employees, whether the contractor offered the contract or initiated the relationship, or whether the contractor accepted the contract or acceded to the relationship. The contractor is not liable for the actions of the other party or parties to the contract which only affect that other party's employees or applicants.

(4) *Standards, criteria or methods of administration*. It is unlawful for the contractor to use standards, criteria, or methods of administration, that are not job-related and consistent with business necessity, and that:

(i) Have the effect of discriminating on the basis of disability; or

(ii) Perpetuate the discrimination of others who are subject to common administrative control.

(5) *Relationship or association with an individual with a disability*. It is unlawful for the contractor to exclude or deny equal jobs or benefits to, or otherwise discriminate against, a qualified individual because of the known disability of an individual with whom the qualified individual is known to have a family, business, social, or other relationship or association.

(6) *Not making reasonable accommodation.* (i) It is unlawful for the contractor to fail to make reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant or employee with a disability as defined in §§ 60-741.2(g)(1)(i) or (ii), unless such contractor can demonstrate that the accommodation would impose an undue hardship on the operation of its business.

(ii) It is unlawful for the contractor to deny employment opportunities to an otherwise qualified job applicant or employee with a disability based on the need of such contractor to make reasonable accommodation to such an individual's physical or mental impairments.

(iii) The reasonable accommodation obligation extends to the contractor's use of electronic or online job application systems. If a contractor uses such a system, it must provide necessary reasonable accommodation to ensure that an otherwise qualified individual with a disability who is not able to fully utilize that system is nonetheless provided with equal opportunity to apply and be considered for all jobs. Though not required by this part, it is a best practice for the contractor to make its online job application system accessible and compatible with assistive technologies used by individuals with disabilities.

(iv) A qualified individual with a disability is not required to accept an accommodation, aid, service, opportunity, or benefit which such qualified individual chooses not to accept. However, if such individual rejects a reasonable accommodation, aid, service, opportunity or benefit that is necessary to enable the individual to perform the essential functions of the position held or desired, and cannot, as a result of that rejection, perform the essential functions of the position, the individual will not be considered a qualified individual with a disability.

(v) A contractor is not required to provide reasonable accommodation to an individual who satisfies only the "regarded as having such an impairment" prong of the definition of "disability," as defined in § 60-741.2(v)(1).

(vi) *Reasonable accommodation procedures.* The development and use of written procedures for processing requests for reasonable accommodation is a best practice that may assist the contractor in meeting its reasonable accommodation obligations under section 503 and this part. Such procedures help ensure that applicants and employees are informed as to how to request a reasonable accommodation and are aware of how such a request will be processed by the contractor. They also help ensure that the contractor's supervisors and managers know what to do should they receive a request for reasonable accommodation, and that all requests for accommodation are processed swiftly, within a reasonable period of time. The development and use of written reasonable accommodation procedures is not required by this part, and it is not a violation of this part for a contractor not to have or use such procedures. However, appendix B of this part provides guidance to contractors that choose to develop and use written reasonable accommodation procedures.

(7) *Qualification standards, tests and other selection criteria—(i) In general.* It is unlawful for the contractor to use qualification standards, employment tests, or other selection criteria that screen out or tend to screen out an individual with a disability or a class of individuals with disabilities, on the basis of disability, unless the standard, test, or other selection criterion, as used by the contractor, is shown to be job-related for the position in question and is consistent with business necessity. Selection criteria that concern an essential function may not be used to exclude an individual with a disability if that individual could satisfy the criteria with provision of a reasonable accommodation. Selection criteria that exclude or tend to exclude an individual with a disability or a class of individuals with disabilities on the basis of disability but concern only marginal functions of the job would not be consistent with business necessity. The contractor may not refuse to hire an applicant with a disability because the applicant's disability prevents him or her from performing marginal functions.

(ii) *Qualification standards and tests related to uncorrected vision.* It is unlawful for the contractor to use qualification standards, employment tests, or other selection criteria based on an individual's uncorrected vision unless the standard, test, or other selection criteria, as used by the contractor, is shown to be job-related for the position in question and consistent with business necessity. An individual challenging a contractor's application of a qualification standard, test, or other criterion based on uncorrected vision need not be an individual with a disability, but must be adversely affected by the application of the standard, test, or other criterion.

(iii) The Uniform Guidelines on Employee Selection Procedures, 41 CFR part 60-3, do not apply to the Rehabilitation Act and are similarly inapplicable to this part.

(8) *Administration of tests.* It is unlawful for the contractor to fail to select and administer tests concerning employment in the most effective manner to ensure that, when a test is administered to a job applicant or employee who has a disability that impairs sensory, manual, or speaking skills, the test results accurately reflect the skills, aptitude, or whatever other factor of the applicant or employee that the test purports to measure, rather than reflecting the impaired sensory, manual, or speaking skills of such employee or applicant, except where such skills are the factors that the test purports to measure.

(9) *Compensation.* In offering employment or promotions to individuals with disabilities, it is unlawful for the contractor to reduce the amount of compensation offered because of any income based upon a disability-related pension or other disability-related benefit the applicant or employee receives from another source. Nor may the contractor reduce the amount of compensation offered to an individual with a disability because of the actual or anticipated cost of a reasonable accommodation the individual needs or may request.

(b) *Claims of No Disability.* Nothing in this part shall provide the basis for a claim that an individual without a disability was subject to discrimination

because of the lack of disability, or because an individual with a disability was granted an accommodation that was denied to an individual without a disability.

§ 60-741.22 Direct threat defense.

The contractor may use as a qualification standard the requirement that an individual be able to perform the essential functions of the position held or desired without posing a direct threat to the health or safety of the individual or others in the workplace. (See § 60-741.2(e) defining *direct threat*.)

§ 60-741.23 Medical examinations and inquiries.

(a) *Prohibited medical examinations or inquiries.* Except as stated in paragraphs (b) and (c) of this section, it is unlawful for the contractor to require a medical examination of an applicant or employee or to make inquiries as to whether an applicant or employee is an individual with a disability or as to the nature or severity of such disability.

(b) *Permitted medical examinations and inquiries—(1) Acceptable pre-employment inquiry.* The contractor may make pre-employment inquiries into the ability of an applicant to perform job-related functions, and/or may ask an applicant to describe or to demonstrate how, with or without reasonable accommodation, the applicant will be able to perform job-related functions.

(2) *Employment entrance examination.* The contractor may require a medical examination (and/or inquiry) after making an offer of employment to a job applicant and before the applicant begins his or her employment duties, and may condition an offer of employment on the results of such examination (and/or inquiry), if all entering employees in the same job category are subjected to such an examination (and/or inquiry) regardless of disability.

(3) *Examination of employees.* The contractor may require a medical examination (and/or inquiry) of an employee that is job-related and consistent with business necessity. The contractor may make inquiries into the ability of an employee to perform job-related functions.

(4) *Other acceptable examinations and inquiries.* The contractor may conduct