

§ 42.512

of equipment or devices (*e.g.*, telecommunication or other telephone devices), the provisions of readers or qualified interpreters, and other similar actions.

(c) Whether an accommodation would impose an undue hardship on the operation of a recipient's program or activity depends upon a case-by-case analysis weighing factors that 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 operation, including the composition and structure of the recipient's workforce; and
- (3) The nature and cost of the accommodation needed.

A reasonable accommodation may require a recipient to bear more than an insignificant economic cost in making allowance for the handicap of a qualified applicant or employee and to accept minor inconvenience which does not bear on the ability of the handicapped individual to perform the essential duties of the job.

§ 42.512 Employment criteria.

(a) A recipient may not use any employment test or other selection criterion that tends to screen out handicapped persons unless:

- (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 tend to screen out fewer handicapped persons are not shown by the appropriate Department officials to be available.

(b) A recipient shall administer tests using procedures (*e.g.*, auxiliary aids such as readers for visually-impaired persons or qualified sign language interpreters for hearing-impaired persons) that accommodate the special problems of handicapped persons to the fullest extent, consistent with the objectives of the test. When a test is administered to an applicant or employee who has a handicap that impairs sensory, manual, or speaking skills, the test results must accurately reflect the applicant's or employee's job skills, aptitude, or whatever other factor the

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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).

§ 42.513 Preemployment inquiries.

(a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not conduct a preemployment medical examination and may not make preemployment inquiry of an applicant as to whether the applicant is a handicapped person or as to the nature or severity of a handicap. A recipient may, however, make preemployment 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 § 42.505(a) of this subpart, 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 § 42.505(b) of this subpart, or when a recipient is taking 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 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 part.

(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:*