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(1) Such preemployment inquiry may only be made after the job applicant has been informed that such disclosure is for the purposes set forth in paragraph (g) of this section; that the disclosure is voluntary and will be kept confidential; and that refusal of the job applicant to provide such information will not subject the applicant to any adverse action.

(2) Information elicited from qualified handicapped job applicants concerning their medical history or condition shall be kept confidential EXCEPT that:

(i) Supervisors and managers may be informed about restrictions on or accommodations to be made for the qualified handicapped individual;

(ii) First aid and safety personnel may be informed, where appropriate, of the need for possible emergency treatment; and

(iii) Compliance officials shall be given relevant information, if requested.

(b) Discriminate on the basis of race, color, religion, handicap or national origin in the use of toilets or any facilities for rest or comfort. Discriminate on the basis of race, color, religion, sex, handicap or national origin in the use of cafeterias, recreational programs or other programs sponsored by the applicant or recipient.

(c) Recipients shall take steps to ensure that communications with job applicants and employees who have vision and/or hearing disabilities are available in appropriate modes.

(d) Recipients shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped job applicant or employee UNLESS the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of the business. Factors to be considered in determining whether an accommodation would impose an undue hardship on the operation of a recipient’s business include:

(1) The overall size of the recipient’s business with respect to number of employees, number and type of facilities,
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size of budget, and the financial condition of the business;

(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.

(e) Such accommodation may include making facilities used by employees readily accessible to and usable by handicapped persons, 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.

(f) The final decision, when making a review or investigation of a complaint, as to whether an accommodation would impose an undue hardship on the operation of a recipient business will be made by the compliance officials of the Small Business Administration.

(g) Recipients shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons, and shall not participate in a contractual relationship that has the effect of subjecting qualified handicapped job applicants or employees to discrimination prohibited by this part. The relationships referred to in this paragraph include those with referral agencies, labor unions, organizations providing or administering fringe benefits to employees of the recipient, and organizations providing training and apprenticeship programs.

(h) Nothing in this part shall apply to a religious corporation, association, educational institution or society with respect to the membership or the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution or society of its religious activities.

§ 113.3–2 Accommodations to religious observance and practice.

A recipient of financial assistance must accommodate to the religious observances and practices of an employee or prospective employee unless the recipient demonstrates that it is unable to reasonably accommodate to an employee’s or prospective employee’s religious observance or practice without undue hardship on the conduct of the employer’s business. As part of this obligation, recipient must make reasonable accommodations to the religious observances and practices of an employee or prospective employee who regularly observes Friday evening and Saturday, or some other day of the week, as Sabbath and/or who observes certain religious holidays during the year and who is conscientiously opposed to performing work or engaging in similar activity on such days, when such accommodations can be made without undue hardship on the conduct of the employer’s business. In determining the extent of a recipient’s obligations under this section, at least the following factors should be considered:

(a) Business necessity, (b) financial costs and expenses, and (c) resulting personnel problems.

§ 113.3–3 Structural accommodations for handicapped clients.

(a) Existing facilities. Recipients in preexisting structures shall make their goods or services accessible to and usable by handicapped clients. Where structural changes are necessary to make the recipient’s goods or services accessible, such changes shall be made as soon as practicable, but in no event later than three years after the effective date of this Regulation. A plan setting forth the steps necessary to complete such structural changes shall be developed and submitted to SBA. If practical, interested persons, including handicapped persons or organizations representing handicapped persons, will be consulted.

(b) Design, construction, and alteration. New facilities shall be designed and constructed to be readily accessible to and usable by persons with handicaps. Alterations to existing facilities that affect usability shall, to the maximum extent feasible, be designed and constructed to be readily accessible to and usable by handicapped persons.

(c) Conformance with Uniform Federal Accessibility Standards. (1) Effective as of January 18, 1991, design, construction, or alteration of buildings in conformance with sections 3-8 of the Uniform Federal Accessibility Standards.