Federal Contract Compliance Programs, Labor § 60–741.23

(i) 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.

(ii) 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 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
§ 60–741.24  Drugs and alcohol.

(a) Specific activities permitted. The contractor:

(1) May prohibit the illegal use of drugs and the use of alcohol at the workplace by all employees;

(2) May require that employees not be under the influence of alcohol or be engaging in the illegal use of drugs at the workplace;

(3) May require that all employees behave in conformance with the requirements established under the Drug–Free Workplace Act of 1988 (41 U.S.C. 701 et seq.);

(4) May hold an employee who engages in the illegal use of drugs or who is an alcoholic to the same qualification standards for employment or job performance and behavior to which the contractor holds its other employees, even if any unsatisfactory performance or behavior is related to the employee’s drug use or alcoholism;

(5) May require that its employees employed in an industry subject to such regulations comply with the standards established in the regulations (if any) of the Departments of Defense and Transportation, and of the Nuclear Regulatory Commission, and other Federal agencies regarding alcohol and the illegal use of drugs; and

(6) May require that employees employed in sensitive positions comply with the regulations (if any) of the Department of Defense and Transportation, and of the Nuclear Regulatory Commission, and other Federal agencies that apply to employment in sensitive positions subject to such regulations.

(b) Drug testing—(1) General policy. For purposes of this part, a test to determine the illegal use of drugs is not considered a medical examination. Thus, the administration of such drug tests by the contractor to its job applicants or employees is not a violation of §60–741.23. Nothing in this part shall be construed to encourage, prohibit, or authorize the contractor to conduct drug tests of job applicants or employees to determine the illegal use of drugs or to make employment decisions based on such test results.