

§ 8b.12

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation; pension or other benefit the applicant or employee receives from any other source.

§ 8b.12 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:

(1) Making the facilities used by the employees in the area where the program or activity is conducted, including common areas used by all employees such as hallways, restrooms, cafeterias and lounges, 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.

(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 of participants, 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.

(d) A recipient may not deny any employment opportunity to a qualified handicapped employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

(e) Nothing in this paragraph shall relieve a recipient of its obligation to make its program or activity accessible as required in subpart C of this part, or to provide auxiliary aids, as required by § 8b.4(b)(7).

§ 8b.13 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 individuals or any class of handicapped individuals 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 do not screen out or tend to screen out as many handicapped individuals are not shown by the Secretary 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 to reflect the applicant's or employee's job skills aptitude, or whatever 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).

§ 8b.14 Preemployment inquiries.

(a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not conduct preemployment inquiry of an applicant for employment as to whether the applicant is a handicapped individual, 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 § 8b.6(a), when a recipient is taking voluntary action to overcome the effects of conditions that resulted in limited participation in this federally assisted program or activity pursuant to § 8b.6(b), or when a recipient is taking