

§ 1232.11

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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, factors to be considered include:

(1) The overall size of the recipient's program with respect to number of employees or volunteers, 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 or volunteer force, and

(3) The nature and cost of the accommodation needed.

§ 1232.11 Employment and volunteer selection criteria.

A recipient may not use employment tests or criteria that discriminate against handicapped persons and shall ensure that employment tests are adapted for use by persons who have handicaps that impair sensory, manual, or speaking skills.

§ 1232.12 Preemployment or pre-selection inquiries.

(a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not conduct a preemployment medical examination or not make preemployment inquiry of an applicant as to whether the applicant is a handicapped person or as to the nature of severity of a handicap. A recipient may, however, make preemployment inquiry into an applicant's ability to perform job-related functions. For the purpose of this paragraph, "pre-employment" as applied to applicants for volunteer positions means prior to selection as a volunteer.

(b) When a recipient is taking remedial action to correct the effects of past discrimination pursuant to § 1232.8(a), 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 § 1232.8(b) or when a recipient is taking affirmative action pursuant to section 503 of the Act, the recipient may invite

applicants for employment or volunteer service 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 or affirmative action efforts; and

(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 or volunteer service on the results of a medical examination conducted prior to the volunteer or employee's entrance on duty. *Provided, That:*

(1) All entering volunteers or employees are subjected to such an examination regardless of handicap, and

(2) The results of such an examination are used only in accordance with the requirements of this part.

(d) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records, except that:

(1) Supervisors and managers may be informed regarding restrictions on the work or duties of handicapped persons and regarding necessary accommodations;

(2) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and

(3) Government officers investigating compliance with the Act shall be provided relevant information upon request.