

Equal Employment Opportunity Comm.

§ 1630.16

are part of a covered entity's health plan.

[56 FR 35734, July 26, 1991, as amended at 81 FR 31139, May 17, 2016; 83 FR 65296, Dec. 20, 2018]

§ 1630.15 Defenses.

Defenses to an allegation of discrimination under this part may include, but are not limited to, the following:

(a) *Disparate treatment charges.* It may be a defense to a charge of disparate treatment brought under §§1630.4 through 1630.8 and 1630.11 through 1630.12 that the challenged action is justified by a legitimate, nondiscriminatory reason.

(b) *Charges of discriminatory application of selection criteria—(1) In general.* It may be a defense to a charge of discrimination, as described in §1630.10, that an alleged application of qualification standards, tests, or selection criteria that screens out or tends to screen out or otherwise denies a job or benefit to an individual with a disability has been shown to be job-related and consistent with business necessity, and such performance cannot be accomplished with reasonable accommodation, as required in this part.

(2) *Direct threat as a qualification standard.* The term “qualification standard” may include a requirement that an individual shall not pose a direct threat to the health or safety of the individual or others in the workplace. (See §1630.2(r) defining direct threat.)

(c) *Other disparate impact charges.* It may be a defense to a charge of discrimination brought under this part that a uniformly applied standard, criterion, or policy has a disparate impact on an individual with a disability or a class of individuals with disabilities that the challenged standard, criterion or policy has been shown to be job-related and consistent with business necessity, and such performance cannot be accomplished with reasonable accommodation, as required in this part.

(d) *Charges of not making reasonable accommodation.* It may be a defense to a charge of discrimination, as described in §1630.9, that a requested or necessary accommodation would impose an undue hardship on the operation of the covered entity's business.

(e) *Conflict with other Federal laws.* It may be a defense to a charge of discrimination under this part that a challenged action is required or necessitated by another Federal law or regulation, or that another Federal law or regulation prohibits an action (including the provision of a particular reasonable accommodation) that would otherwise be required by this part.

(f) *Claims based on transitory and minor impairments under the “regarded as” prong.* It may be a defense to a charge of discrimination by an individual claiming coverage under the “regarded as” prong of the definition of disability that the impairment is (in the case of an actual impairment) or would be (in the case of a perceived impairment) “transitory and minor.” To establish this defense, a covered entity must demonstrate that the impairment is both “transitory” and “minor.” Whether the impairment at issue is or would be “transitory and minor” is to be determined objectively. A covered entity may not defeat “regarded as” coverage of an individual simply by demonstrating that it subjectively believed the impairment was transitory and minor; rather, the covered entity must demonstrate that the impairment is (in the case of an actual impairment) or would be (in the case of a perceived impairment) both transitory and minor. For purposes of this section, “transitory” is defined as lasting or expected to last six months or less.

(g) *Additional defenses.* It may be a defense to a charge of discrimination under this part that the alleged discriminatory action is specifically permitted by §1630.14 or §1630.16.

[56 FR 35734, July 26, 1991, as amended at 76 FR 17003, Mar. 25, 2011]

§ 1630.16 Specific activities permitted.

(a) *Religious entities.* A religious corporation, association, educational institution, or society is permitted to give preference in employment to individuals of a particular religion to perform work connected with the carrying on by that corporation, association, educational institution, or society of its activities. A religious entity may require that all applicants and employees conform to the religious tenets of such organization. However, a religious