

16. Add Subpart E to read as follows:

**Subpart E—Employment Practices for Grant Recipients**

Sec.

1208.170 General prohibitions against employment discrimination.

1208.171 Reasonable accommodation.

1208.172 Employment criteria.

1208.173 Preemployment inquiries.

**§ 1208.170 General prohibitions against employment discrimination.**

(a) No qualified individual with a disability shall, on the basis of a disability, be subjected to discrimination in employment under any program or activity that receives or benefits from NHPRC grants.

(b) A recipient must make all decisions concerning employment under any program or activity to which this part applies in a manner which ensures that discrimination on the basis of a disability does not occur and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of a disability.

(c) The prohibition against discrimination in employment applies to the following activities:

(1) Recruitment, advertising, and the processing of applications for employment;

(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;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including social or recreational programs; and

(9) Any other term, condition, or privilege of employment.

(d) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified applicants or employees with disabilities to discrimination prohibited by this subpart. The relationships referred to in this paragraph include relationships with employment and

referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeship programs.

**§ 1208.171 Reasonable accommodation.**

(a) A recipient must make reasonable accommodation to the known physical or mental limitations of an otherwise qualified applicant or employee with a disability unless the recipient can demonstrate, based on the individual assessment of the applicant or employee, that the accommodation would impose an undue hardship on the operation of its program.

(b) Reasonable accommodation may include making facilities used by employees readily accessible to and usable by persons with disabilities, job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices (e.g., telecommunication or other telephone devices), the provisions of readers or qualified interpreters, and other similar actions.

(c) Whether an accommodation would impose an undue hardship on the operation of a recipient's program depends upon a case-by-case analysis weighing factors that include:

(1) The overall size of the recipient's program with respect to number of employees, 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 employee or applicant with a disability if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

**§ 1208.172 Employment criteria.**

A recipient may not use employment tests or criteria that discriminate against persons with disabilities and must ensure that employment tests are adapted for use by persons with disabilities that impair sensory, manual, or speaking skills.

**§ 1208.173 Preemployment inquiries.**

(a) Except as provided in paragraphs (b) and (c) of this section, a recipient may not conduct a preemployment medical examination or make a preemployment inquiry as to whether an applicant is a person with a disability or as to the nature or severity

of a disability. 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, 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, or when a recipient is taking affirmative action pursuant to section 504 of the Act, the recipient may invite applicants for employment to indicate whether and to what extent they are disabled, 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 efforts;

(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 on the results of a medical examination conducted prior to the employee's entrance on duty, provided that:

(1) All entering 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 subpart.

(d) The applicant's medical record shall be collected and maintained on separate forms and kept confidential, except that the following persons may be informed:

(1) Supervisors and managers regarding restrictions on the work of persons with disabilities and necessary accommodations;

(2) First aid and safety personnel if the condition might require emergency treatment; and

(3) Government officials investigating compliance with the Act upon request for relevant information.

17. Designate newly redesignated § 1208.184 as Subpart F—Compliance Procedures.

18. Amend the newly redesignated § 1208.184 by revising paragraphs (a), (b), (c) and (h) to read as follows: