

§ 1630.4

and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in the illegal use of drugs; or

(2) Is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(3) Is erroneously regarded as engaging in such use, but is not engaging in such use.

(c) It shall not be a violation of this part for a covered entity to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in paragraph (b) (1) or (2) of this section is no longer engaging in the illegal use of drugs. (See § 1630.16(c) Drug testing).

(d) *Disability* does not include:

(1) Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

(2) Compulsive gambling, kleptomania, or pyromania; or

(3) Psychoactive substance use disorders resulting from current illegal use of drugs.

(e) *Homosexuality and bisexuality* are not impairments and so are not disabilities as defined in this part.

§ 1630.4 Discrimination prohibited.

It is unlawful for a covered entity to discriminate on the basis of disability against a qualified individual with a disability in regard to:

(a) Recruitment, advertising, and job application procedures;

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

(c) Rates of pay or any other form of compensation and changes in compensation;

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

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

(f) Fringe benefits available by virtue of employment, whether or not administered by the covered entity;

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

(h) Activities sponsored by a covered entity including social and recreational programs; and

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

The term *discrimination* includes, but is not limited to, the acts described in §§ 1630.5 through 1630.13 of this part.

§ 1630.5 Limiting, segregating, and classifying.

It is unlawful for a covered entity to limit, segregate, or classify a job applicant or employee in a way that adversely affects his or her employment opportunities or status on the basis of disability.

§ 1630.6 Contractual or other arrangements.

(a) *In general.* It is unlawful for a covered entity to participate in a contractual or other arrangement or relationship that has the effect of subjecting the covered entity's own qualified applicant or employee with a disability to the discrimination prohibited by this part.

(b) *Contractual or other arrangement defined.* The phrase *contractual or other arrangement or relationship* includes, but is not limited to, a relationship with an employment or referral agency; labor union, including collective bargaining agreements; an organization providing fringe benefits to an employee of the covered entity; or an organization providing training and apprenticeship programs.

(c) *Application.* This section applies to a covered entity, with respect to its own applicants or employees, whether the entity offered the contract or initiated the relationship, or whether the entity accepted the contract or acceded to the relationship. A covered entity is not liable for the actions of the other party or parties to the contract which only affect that other party's employees or applicants.