

§ 12113. Defenses**(a) In general**

It may be a defense to a charge of discrimination under this chapter that an alleged application of qualification standards, tests, or selection criteria that screen out or tend to screen out or otherwise deny 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 by reasonable accommodation, as required under this subchapter.

(b) Qualification standards

The term “qualification standards” may include a requirement that an individual shall not pose a direct threat to the health or safety of other individuals in the workplace.

(c) Qualification standards and tests related to uncorrected vision

Notwithstanding section 12102(4)(E)(ii) of this title, a covered entity shall not use qualification standards, employment tests, or other selection criteria based on an individual’s uncorrected vision unless the standard, test, or other selection criteria, as used by the covered entity, is shown to be job-related for the position in question and consistent with business necessity.

(d) Religious entities**(1) In general**

This subchapter shall not prohibit a religious corporation, association, educational institution, or society from giving preference in employment to individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

(2) Religious tenets requirement

Under this subchapter, a religious organization may require that all applicants and employees conform to the religious tenets of such organization.

(e) List of infectious and communicable diseases**(1) In general**

The Secretary of Health and Human Services, not later than 6 months after July 26, 1990, shall—

- (A) review all infectious and communicable diseases which may be transmitted through handling the food supply;
- (B) publish a list of infectious and communicable diseases which are transmitted through handling the food supply;
- (C) publish the methods by which such diseases are transmitted; and
- (D) widely disseminate such information regarding the list of diseases and their modes of transmissibility¹ to the general public.

Such list shall be updated annually.

(2) Applications

In any case in which an individual has an infectious or communicable disease that is

transmitted to others through the handling of food, that is included on the list developed by the Secretary of Health and Human Services under paragraph (1), and which cannot be eliminated by reasonable accommodation, a covered entity may refuse to assign or continue to assign such individual to a job involving food handling.

(3) Construction

Nothing in this chapter shall be construed to preempt, modify, or amend any State, county, or local law, ordinance, or regulation applicable to food handling which is designed to protect the public health from individuals who pose a significant risk to the health or safety of others, which cannot be eliminated by reasonable accommodation, pursuant to the list of infectious or communicable diseases and the modes of transmissibility¹ published by the Secretary of Health and Human Services.

(Pub. L. 101-336, title I, §103, July 26, 1990, 104 Stat. 333; Pub. L. 110-325, §5(b), Sept. 25, 2008, 122 Stat. 3557.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (e)(3), was in the original “this Act”, meaning Pub. L. 101-336, July 26, 1990, 104 Stat. 327, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 12101 of this title and Tables.

AMENDMENTS

2008—Subsecs. (c) to (e). Pub. L. 110-325 added subsec. (c) and redesignated former subsecs. (c) and (d) as (d) and (e), respectively.

EFFECTIVE DATE OF 2008 AMENDMENT

Amendment by Pub. L. 110-325 effective Jan. 1, 2009, see section 8 of Pub. L. 110-325, set out as a note under section 705 of Title 29, Labor.

EFFECTIVE DATE

Section effective 24 months after July 26, 1990, see section 108 of Pub. L. 101-336, set out as a note under section 12111 of this title.

§ 12114. Illegal use of drugs and alcohol**(a) Qualified individual with a disability**

For purposes of this subchapter, a qualified individual with a disability shall not include any employee or applicant who is currently engaging in the illegal use of drugs, when the covered entity acts on the basis of such use.

(b) Rules of construction

Nothing in subsection (a) shall be construed to exclude as a qualified individual with a disability an individual who—

- (1) has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;
- (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;

except that it shall not be a violation of this chapter for a covered entity to adopt or admin-

¹ So in original. Probably should be “transmissibility”.