



March 21, 2023

The Honorable Charlotte Burrows
Chair
United States Equal Employment Opportunity Commission
131 M Street, NE
Washington, DC 20507

RE: 29 CFR § 1630.10 - Qualification standards, tests, and other selection criteria

Dear Chair Burrows:

The National Federation of the Blind requests that the Equal Employment Opportunity Commission (EEOC) reconsider the rule at 29 C.F.R. Section 1630.10 to address a discriminatory employment qualification used by numerous employers all across the United States wherein employers require all applicants for a position to possess a valid driver's license even when driving is not an essential function of the job. The National Federation of the Blind is the transformative membership and advocacy organization of blind Americans, with the goal of complete integration of the blind into society on the basis of equality. The Federation has spent a large portion of its 82 year history combating discrimination and low expectations in the workplace.

According to the American Medical Association, "All states have visual acuity requirements for licensure."¹ We understand the need for states to require specific visual acuity standards to operate a vehicle and, therefore, obtain a driver's license. Until automated vehicles where no driver input is required are widely available, this is a necessity which automatically precludes blind and low vision individuals from acquiring said license. However, based upon the language of the ADA (42 U.S.C. § 12113(c)) and the accompanying regulation,² a driver's license is a qualification standard or selection criterion "based on an individual's uncorrected vision." When an employer requires an individual to possess a driver's license as a condition of employment for a position where driving is not an essential function,³ the employer is in direct violation of the law.

The EEOC has released an informal discussion letter from 2006, stating:

Under the Americans with Disabilities Act (ADA), an employer may impose qualification standards that are job-related and consistent with business necessity. 29 C.F.R. §1630.10. As explained in the appendix to the ADA regulations, "the purpose of this provision is to ensure that individuals with disabilities are not excluded from job opportunities unless they

¹ Paul G. Steinkuller, "Legal Vision Requirements for Drivers in the United States," *Virtual Mentor* 12, no. 12 (December 2010): 939.

² 29 CFR § 1630.10.

³ 29 CFR § 1630.2(n).

are actually unable to do the job.” 29 C.F.R. pt. 1630 app. §1630.10. A job requirement that is related to an individual’s ability to perform an essential function of the job would be consistent with business necessity. However, a selection criterion that excludes a person because of a disability but “does not concern an essential function of the job would not be consistent with business necessity.”⁴

While this letter is only to be considered “technical assistance,”⁵ and was written prior to the publication of the current regulation, the position is nonetheless consistent with the current regulation and with the spirit of the Americans with Disabilities Act.

It is clear that qualification standards or selection criteria based on visual acuity, such as a driver’s license, are explicitly prohibited in the current law. However, we believe that adding a short clarifying paragraph to the rule regarding qualification standards and tests related to uncorrected vision is essential in order to emphasize the point that this discriminatory behavior is a violation of the law. We propose amending the text of 29 C.F.R. § 1630.10 by adding a new paragraph under subsection (b) which reads:

*(1) **Driver’s License Requirements.** It is unlawful for a covered entity to require an applicant to possess a driver’s license unless driving an automobile is an essential function of the position as defined in Section 1630.2(n) of this Title.*

This clarifying edit would make it abundantly clear that requiring a driver’s license as a condition of employment is prohibited unless driving a vehicle is an essential function of the position. Therefore, the National Federation of the Blind strongly urges the EEOC to accept this petition of reconsideration regarding the above rule in order to ensure that blind and low vision Americans who are unable to acquire a driver’s license are not barred from applying for and obtaining employment positions which they are capable of performing.

If you have any questions, or require any additional assistance, please do not hesitate to contact me.

Sincerely,



Mark A. Riccobono, President
National Federation of the Blind

⁴ Sharon Rennert to Unknown, Equal Employment Opportunity Commission, Washington, DC (June 21, 2006), <https://www.eeoc.gov/foia/eeoc-informal-discussion-letter-147>.

⁵ Ibid.