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WIOA Section 188 Discrimination Complaint Procedures

Equal opportunity employment/program. Auxiliary aids and services are available upon request to individuals with disabilities.

PURPOSE:

WorkForce WV provides this issuance as guidance on the WIOA Section 188 Discrimination Complaint Procedures.

REFERENCES:

These policies and procedures govern discrimination complaint investigations arising under Section 188 of the Workforce Innovation and Opportunity Act (WIOA) at 29 U.S.C. § 3248, as implemented by 29 C.F.R. §§ 38.69-38.79. The policies and procedures are issued in compliance with:

- WIOA Section 188, which prohibits discrimination against all individuals in the United States on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, or political affiliation or belief, or against beneficiaries on the basis of either citizenship status or participation in any WIOA Title I-financially assisted program or activity;
- Title VI of the Civil Rights Act of 1964, 42 U.S.C. § 2000d et seq., as amended, which prohibits discrimination on the bases of race, color and national origin;
- Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. § 794 et seq., as amended, which prohibits discrimination against qualified individuals with disabilities;
- The Age Discrimination Act of 1975, 42 U.S.C. § 6101 et seq., as amended, which prohibits discrimination on the basis of age; and
- Title IX of the Education Amendments of 1972, 29 U.S.C. § 1681 et seq., as amended, which prohibits discrimination on the basis of sex in educational programs.

DEFINITIONS:

Beneficiary – Individual or individuals intended by Congress to receive aid, benefits, services, or training from a recipient of Federal financial assistance under a program or activity established by Federal statute.

CRC – U.S. Department of Labor/Office of Assistant Secretary for Administration and Management/*Civil Rights Center*.

Complainant – Individual filing discrimination complaint based on race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, on the basis of either citizenship as a lawfully admitted immigrant authorized to work in the United States, or participation in a WIOA Title I financially assistance program or activity.

Federal Financial Assistance – Refers to more than just monetary forms, it can include nonmonetary forms of assistance, such as the provision of personnel at the grantmaking/recipient agency's expense, or the grant or donation of property, among other things.

Mediation – A process of alternative dispute resolution whereby the negotiation of issues is facilitated by a neutral party. It is a voluntary and confidential process and can result in a binding agreement.

Recipient – Any entity that receives financial assistance under WIOA Title I, either directly from the US Department of Labor or through the Governor or another recipient. American Job Center Partners are considered recipients to the extent that they participate in the one-stop delivery system.

Respondent – A grant applicant or recipient against whom a complaint has been filed under the nondiscrimination and equal opportunity provisions of WIOA.

BACKGROUND:

This policy issuance is intended to ensure that WorkForce West Virginia, the Workforce Development Boards (WDBs), and other grant recipients/program providers implement complaint policies and procedures in compliance with guidelines provided by the Director, Civil Rights Center, U.S. Department of Labor (CRC), regarding the nondiscrimination/equal opportunity provisions of Title I of the Workforce Innovation and Opportunity Act (WIOA).

Section 188 of the WIOA, and the implementing regulations at 29 CFR Part 38, prohibits discrimination because of race, color, religion, sex (including pregnancy, childbirth, or related medical conditions, gender identity, and transgender status), national origin (including limited English proficiency), age, disability or political affiliation or belief, citizenship status, or participation in any WIOA Title I financially-assisted program or activity.

Each Workforce Development Area has designated a Local Equal Opportunity Officer who is responsible for adopting and publishing discrimination complaint policies and procedures (already established by the state-level Equal Opportunity Officer) and ensuring compliance with those procedures. A recipient/program provider must provide initial and continued notice that it does not discriminate on any prohibited ground. A copy of the "Equal Opportunity is the Law"

notice is provided to each participant and made a part of each participant's file per the regulations. If a complaint is filed, a copy of this Equal Opportunity (EO) Discrimination Complaint Processing Policy and Procedures is to be provided to the complainant, along with a copy of the "Equal Opportunity is the Law" notice.

The Discrimination Complaint Package may be made available in alternative formats on request of a person who is blind or has low vision by WorkForce WV. Moreover, all complaint notices, procedures, and forms must contain a "Babel" notice pursuant to 29 C.F.R. § 38.9(g)(3), which provides:

Recipients must include a "Babel notice," indicating in appropriate languages that language assistance is available, in all communications of vital information, such as hard copy letters or decisions or those communications posted on websites.

BABEL NOTICE (29 C.F.R. § 38.9(g)(3)): This document contains vital information. If English is not your preferred language, please let any WorkForce WV employee know of your needs or contact your local or state WIOA EO Officers:

EO Officer Information:

Region 1

Barbara Dawes
200 New River Town Center
Beckley, WV 25801
(304) 253-3611

Region 2

Melissa Bias
2699 Park Avenue, Suite 240
Huntington, WV 25704
(304) 429-5900

Region 3

Amy Farley
405 Capitol Street, Suite 506
Charleston, WV 25301
(304) 344-5760

Region 4

Miranda Lough
709 Market Street
Parkersburg, WV 26101
(304) 424-7271

Region 5

Erinn Kittle
1245 Warwood Avenue
Wheeling, WV 26003
(304) 231-1170

Region 6

Amy Hall
17 Middletown Road
White Hall, WV 26554
(304) 368-9530

Region 7

Stacy Swick
151 Robert C. Byrd Industrial
Park Rd.
Moorefield, WV 26836
(304) 530-5258

**Nicholas Allen,
State WIOA EO Officer
WORKFORCE WV (Recipient)**
1900 Kanawha Blvd., E.
Building 3, 3rd Floor, Suite 300
Charleston, WV 25305
(304) 558-1600
WV Relay 7-1-1
WorkForceEO@wv.gov

POLICY AND PROCEDURE

Discrimination Complaint and Filing

All grant recipients/program providers under Title I of WIOA are responsible for complying with the discrimination complaint procedures consistent with 29 CFR Part 38, as outlined in this policy: Any person who believes that he or she, or any specific class of individuals, has been or is being subjected to discrimination on the basis of race, color, religion, sex (including pregnancy, childbirth, or related medical conditions, gender identity, and transgender status), national origin (including limited English proficiency), age, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in WIOA Title I, has the right to file a complaint within one hundred and eighty (180) calendar days of the alleged discrimination. The filing period may be extended for good cause in some limited circumstances; however, only the Director of CRC may extend the filing time.

Receipt of Complaint

A complainant must file a complaint within 180 days of the alleged act(s) of discrimination or retaliation. Please note, complaints can be accepted by an employee in a WorkForce West Virginia American Job Center, or the EO Officer of a local Workforce Development Board. The employee or local WDB EO Officer will immediately accept the complaint and forward the complaint to the WorkForce West Virginia EO Officer.

The complainant may file with WorkForce West Virginia or the Department of Labor, Director, Civil Rights Center (Federal). Filing a complaint with WorkForce West Virginia does not affect a complainant's right to file a complaint with the Civil Rights Center if he or she is not satisfied with the resolution provided by WorkForce West Virginia. The WorkForce West Virginia EO Officer is responsible for determining if the complaint is covered by 29 CFR Part 38, and for resolving jurisdictional issues, if any. Complaints may be submitted, in writing, to:

Nicholas Allen, State WIOA EO Officer
WORKFORCE WV (Recipient)
1900 Kanawha Blvd., E.
Building 3, 3rd Floor, Suite 300
Charleston, WV 25305
(304) 558-1600
WV Relay 7-1-1
WorkForceEO@wv.gov

OR

Naomi M. Barry-Pérez, Director
Civil Rights Center (CRC)
U.S. Department of Labor
200 Constitution Avenue, NW, Rm. N-4123
Washington, D.C. 20210
(202) 693-6502
TTY (202) 693-6515 or electronically at
www.dol.gov/CRC

Forms Used to File Complaint

State - An individual may file a complaint at the state level by completing and submitting the WorkForce West Virginia Discrimination Complaint Form (WFWV CIF), which may be obtained from the WorkForce West Virginia Equal Opportunity Office, or local Workforce Development Boards. Complaint information is also available on the WorkForce West Virginia website at <https://workforcewv.org/about-us/equal-opportunity/complaint-procedures>.

Federal – An initial complaint filed directly with CRC must be filed within 180 days of the alleged discrimination. CRC may extend the filing time for good cause. Complainants are encouraged to file by completing CRC's Complaint Information Form (CIF) and Privacy Act Consent Form, which are available at the link below:

- [Complaint Information Form](#)

If the CIF and Privacy Act Consent Form are not submitted initially, CRC will send them to the complainant to be completed, signed, and returned. CRC will not process a complaint without these forms.

Complaints and Privacy Act Consent Forms may be submitted to CRC in the following ways:

- Sent by postal mail to:

Director
Civil Rights Center
ATTENTION: Office of External Enforcement
U.S. Department of Labor
200 Constitution Ave NW
Room N-4123
Washington, DC 20210
- Faxed to 202-693-6505, ATTENTION: Office of External Enforcement (limit of 15 pages)
- Emailed to CRCExternalComplaints@dol.gov

Required Contents of Complaint. (29 CFR§38.70)

No verbal communication may be accepted for processing as a discrimination complaint. Any individual attempting to do so must be notified that only written, and signed, complaints may be accepted for processing. Each complaint must be filed in writing, either electronically or in hard copy, and must contain the following information:

- The complainant's name, mailing address, and, if available, email address (or another means of contacting the complainant).
- The identity of the respondent (the individual or entity that the complainant alleges is responsible for the discrimination).
- A description of the complainant's allegations. This description must include enough detail to allow the Director or the recipient, as applicable, to decide whether:
 - CRC or the recipient, as applicable, has jurisdiction over the complaint;
 - The complaint was filed in time; and
 - The complaint has apparent merit; in other words, whether the complainant's allegations, if true, would indicate noncompliance with any of the nondiscrimination and equal opportunity provisions of WIOA or this part.
- The written or electronic signature of the complainant or the written or electronic signature of the complainant's representative.

Due to the signatory and identity requirements, anonymous communications (verbal or written) shall not be considered a discrimination complaint.

Right to Representation (CFR 29§38.71)

Both the complainant and the respondent have the right to be represented by an attorney or other individual of their choice.

State-Level Complaint Processing Procedure

As stated previously, a complainant must file a complaint within 180 days of the act of alleged discrimination to be accepted as timely. Once received, the State-Level EO Officer will date stamp the signed Discrimination Complaint Form to establish the timeliness of the complaint. At this point, the complaint will be assigned a unique identifier for the purpose of tracking the complaint throughout the rest of the process. This designation will follow the sequence of calendar year + Title I Program + sequential number in which the complaint was received. For example, if a complaint arrived from a participant in the WIOA Dislocated Worker program and it was the fifth complaint received in the calendar year of 2019, the designation for this case would be 2019-WIOADW-5.

Next, jurisdiction must be determined to ensure proper handling of the complaint. The complaint must meet all requirements for content, allege a prohibited basis of discrimination, set forth an adverse action, and identify a respondent that qualifies as a “recipient” under 29 CFR §38.4(zz).

If it is determined that WorkForce WV **DOES NOT** have jurisdiction over a complaint, the complainant will be notified in writing within 5 business days of the determination. This Notice of Lack of Jurisdiction will include a statement of the reasons for such determination and a notice that the complainant has a right to file a complaint with the Civil Rights Center within 30 days of the date on which the complainant receives the notice.

If it is determined that WorkForce WV **DOES** have jurisdiction over the matter, the EO Office will provide written notice to the complainant within 10 working days containing the following:

1. Initial, written notice that contains:
 - An acknowledgement that the complaint has been received.
 - Notice that the complainant has the right to be represented in the complaint process.
 - A copy of the “Equal Opportunity Is the Law” Notice.
 - Notice that the complainant has the right to request and receive, at no cost, auxiliary aids and services, language assistance services, and that this notice will be translated into non-English languages as required.
2. A written statement of the issue(s) and, for each issue, a statement on whether the issue will be accepted or rejected and the reasons for each determination.
3. Notice of the period of fact finding or investigation of the underlying circumstances of the complaint, which may take around 20 working days.
4. Information regarding Mediation (the Alternative Dispute Resolution method chosen by WorkForce WV), and the Election Form, will be provided. If the complainant chooses to mediate, they must inform the WorkForce WV EO Officer within 5 days of receiving this written notice.
5. Notice of Investigatory Use of Personal Information and Consent Forms.

6. Information regarding the Notice of Final Action.

Respondent will be notified that a complaint alleging discrimination has been filed and is being processed. A summary of the complaint and a notice that retaliation is against the law will be provided to respondent. The respondent will be also be notified if mediation has been chosen by the complainant as a means of resolution.

Mediation Process

Alternative Dispute Resolution (ADR) may be attempted any time after a written complaint has been filed with the recipient, but before the Notice of Final Action has been issued. The choice whether to use mediation or the customary investigative process rests with the complainant. If the complainant chooses mediation the respondent will be notified. WorkForce West Virginia mediation procedures are as follows:

- If mediation is elected, the WorkForce West Virginia EO Officer will notify the mediator within two (2) business days of receipt of the Mediation Election Form. The session will begin no later than fifteen (15) business days after the mediator is notified.
- Parties will receive notice of time and location where the mediation session will be conducted.
- Two (2) business days will be allowed for the mediation session to achieve a resolution. If the parties do not reach an agreement within the two-day mediation session, a notice will be issued within fifteen (15) calendar days from the end of the two-day mediation session, outlining the facts or circumstances relevant to the attempt to settle the issues. Notice will be given that the complaint has been referred for investigation.
- If mediation is successful, a description of the resolution will be provided. A copy of the settlement agreement will be provided to the complainant and respondent within fifteen (15) days from the conclusion of the mediation session and the agreement will contain the following:
 - Signatures of the mediator, complainant, and respondent.
 - Description of the settlement of the issue(s).
 - Future responsibilities of both parties.
 - Notice of rights, to both complainant and respondent, that if either party to the agreement breaches the agreement, then the non-breaching party may file a

complaint with the CRC within 30 days of the learning the agreement was breached.

Breach of Agreement

A party to any agreement reached under ADR may file a complaint with the Civil Rights Center in the event the agreement is breached. The non-breaching party may notify the Director of the Civil Rights Center within 30 days of the date on which the non-breaching party learns of the alleged breach. The Director must evaluate the circumstances to determine whether the agreement has been breached. If the Director determines that the agreement has been breached, the complaint will be reinstated and processed in accordance with the recipient's procedures.

Notice of Final Action

A written Notice of Final Action, shall be provided to the complainant within 90 days of the date on which the complaint was filed, that contains the following information:

- For each issue raised in the complaint, a statement of either the decision on the issue(s) and an explanation of the underlying reasons or a description of the way the parties resolved the issue(s).
- Notice that the complainant has a right to file a complaint with CRC within 30 days of the date on which the Notice of Final Action is received if the complainant is dissatisfied with the recipient's final action on the complaint.

Failure to Provide Notice of Final Action or Process Complaint

If, for any reason, WorkForce WV fails to provide a Notice of Final Action or completely process a complaint within 90 days from the filing date, a complainant (or their representative) may file a complaint with the Civil Rights Center. This complaint must be filed within 30 days of the expiration of the 90-day time limit.