



DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

Workforce Innovation and Opportunity Act Nondiscrimination Plan

Element 7 — Complaint Processing Procedures

(29 C.F.R. §§ 38.54(c)(1)(vii) & 38.69 to 38.85)

POLICY

The State of Hawai'i through the DLIR is committed to ensuring that any individual subjected to unlawful discrimination by any employee, program, or activity covered by the WIOA is aware the right to file a discrimination complaint. The DLIR will ensure that recipients are aware of their obligations to comply with the complaint procedures set forth (*Exhibit A*). All recipients, including the DLIR & the Local Workforce Areas (LWDAs), must comply with these procedures, which meet the requirements of 29 C.F.R. 38.69 to 38.74.

The DLIR is committed to establishing procedures for obtaining prompt corrective action and, as necessary, applying sanctions when noncompliance is found. Corrective actions and sanctions are intended to guarantee equal access to programs, activities, and employment opportunities provided by WIOA financially assisted recipient organizations. Corrective actions must be appropriate for the violation identified and serve to end the discrimination or redress specific violation(s).

The State-Level EO Officer will have the overall responsibility for the State of Hawai'i EO Monitoring. Each of the LWDA Directors and the Local-Level EO Officers will be responsible for EO Monitoring in their respective areas and report to the State-Level EO Officer. The Local-Level EO Officers will schedule their EO Monitoring of recipients and/or sub-recipients in their county on an annual basis. The State-Level EO Officer shall be included as part of a collaborative team with the Local-Level EO Officers to do on-site visits of their AJCs annually, unless a complaint is received, or a desk audit indicates the need of an immediate on-site review.

Each EO monitoring review shall include a review of each recipient's and/or sub-recipient's compliance with its administrative obligations under WIOA Section 188 as well as 29 C.F.R. Part 38 responsibilities to determine whether discrimination is occurring. The monitoring review shall include analysis of data and records collected by the recipient and/or sub-recipient, pursuant to 29 C.F.R. 38.41, to determine whether a difference in service access based has practical or statistical significance.

1. Required Elements of a Recipient's Complaint Processing Procedures

The State and Local-Level EO Officers shall use the WIOA Discrimination and Equal Opportunity Complaint Procedures and forms to process claims, except complainants may submit written complaints without using the prescribed form. All recipients' complaint procedures shall contain the following elements:

1. A written acknowledgment of the complaint within five working days,
2. A written statement of the issue(s) raised by the complainant,
3. A notice of the right to representation,
4. A notice of the right to auxiliary aids and services, including language assistance,
5. A period of fact-finding not to exceed 75 days to include the option of Alternate Dispute Resolution (ADR),
6. A written Notice of Final Action within 90 days to include notice that the complainant has 30 days from the date of issuance of the Notice of Final Action to file a complaint with the Civil Rights Center (CRC) if the complainant is dissatisfied with the recipient's final action on the complaint.

2. Violations and Corrective Actions

There are two types of violations: technical and discrimination.

1. Technical violations may include, but are not limited to, failure to designate an EO Officer who is a senior level employee whose responsibilities and activities are not in conflict with other duties, failure to collect data, failure to include the required language in assurances, and failure to display an EO poster notice.
2. Discrimination violations may include findings of disparate treatment, disparate impact, and failure to provide reasonable accommodations.

Corrective actions are designed to eliminate violations.

1. Corrective actions must be tailored specifically to each finding and designed to correct the problem completely. The action taken to correct the violation should be appropriate and reasonable according to the violation that has occurred.
2. If a technical violation involved the failure to include tag lines in a communication, the appropriate action would be to re-issue the communication with the tag lines included.
3. For each corrective action of a technical violation, the recipients and State or Local-Level EO Officer will establish the minimum time frame necessary to correct the violation completely. Technical assistance may be provided to assist with deficiencies or noncompliance that cannot be resolved or corrected voluntarily. The corrective action must be completed within forty-five (45) days of the recipient's written notification of the technical violation.
4. To correct a discrimination violation, the appropriate corrective action may be to provide "make-whole relief." Make-whole relief is "making the person whole" or bringing the person to the condition he or she would be in if the discrimination had not occurred. Such relief might involve back pay, front pay, retroactive benefits, training, or any service discriminatorily denied.
5. Corrective actions for a discrimination violation will be designed to end discrimination and/or redress the specific violation(s) and must assure discrimination does not recur. Where appropriate, it may also include educating individuals responsible for the violation.

3. Documenting That Corrective Actions and Prospective Relief Plans Are Being Maintained

Corrective Action Process

1. When a determination has been made that a violation of the nondiscrimination or equal opportunity provisions of the WIOA has occurred, the reviewing EO Officer shall notify the violating recipient through the issuance of a Monitoring Report.
 - a. Within thirty (30) working days of the completion of the review, the reviewing EO Officer shall prepare a Monitoring Report that shall be disseminated to the appropriate executives/managers and the State-Level EO Officer and shall discuss in detail areas of pending or noncompliance and outline those areas that are found to be in compliance.
2. Where a technical violation has been or can be corrected immediately, an assurance shall be provided by the recipients to the State-Level and Local-Level EO Officers to document the corrective action taken and the prospective relief that is planned. A written assurance will attest that the recipient will continue to take steps to correct the deficiency and avoid recurrences.
 - a. An example of a corrective action plan to address a technical violation is failing to include taglines in a communication. The corrective action plan shall include an explanation of the corrective action, that the communication shall be reissued with taglines added, and the timeframe for reissuing the communication.
 - b. A recipient may also engage in prospective relief, which are curative and preventative steps voluntarily taken to ensure that a violation does not reoccur in the future. A recipient can plan to ensure that all future notices will include the required language by changing policies, practices, or produces and educating those responsible for implementing the revisions.
3. The Local-Level and/or the State-Level EO Officer will institute follow-up monitoring procedures to ensure that commitments to corrective and remedial actions are being fulfilled. In the case of a serious violation, or of a deficiency that may not be corrected immediately, a "Conciliation Agreement" shall be negotiated between the party and the Local-Level and/or the State-Level EO Officer. The agreement must:
 - a. Be in writing,
 - b. Address the legal and contractual obligations of the recipient,
 - c. Address each cited violation,
 - d. Specify the corrective or remedial action to be taken within a stated period of time to come into compliance,
 - e. Provide for periodic reporting on the status of the corrective and remedial action,
 - f. State that the violation(s) will not recur,

- g. State that nothing in the agreement will prohibit CRC from sending the agreement to the complainant, making it available to the public, or posting it on the CRC or recipient's web site,
- h. State that, in any proceeding involving an alleged violation of the conciliation agreement, CRC may seek enforcement of the agreement itself and shall not be required to present proof of the underlying violations resolved by the agreement, and
- i. Provide for enforcement for the breach of the agreement.

4. Imposing Sanctions

- 1. Sanctions are the judicial enforcement actions (i.e., suspension, termination, termination of funding, etc.) which are applied when appropriate corrective actions are not taken in compliance with WIOA regulations.
- 2. When all attempts to provide assistance to effect voluntary correction of a violation have failed, or it is apparent that the recipient fails or refuses to correct the violation within the timeframe established, the DLIR shall impose the established sanction guidelines.
- 3. The DLIR shall issue a Notice of Sanctions that shall be done by the DLIR Director or the State-Level EO Officer.
- 4. Upon termination of the WIOA Title I financial assistance, the matter shall be referred to the State Attorney General for recoupment of any of all funds as deemed appropriate by the State Attorney General.
- 5. A recipient may apply for reinstatement after the termination of financial assistance by petitioning the DLIR Director after one (1) year of the termination. Within thirty (30) days of receipt of the petition, the DLIR Director will issue a decision based on the merits of the petition for reinstatement.

5. Monitoring programs and activities for compliance

The State-Level EO will monitor the LWDAs, DLIR programs, and the operation of the State Workforce Development Board annually for meeting the nondiscrimination requirements of this policy and 29 CFR Part 38.

The Local-Level EO is responsible for monitoring and evaluating their local area recipients' and/or sub-recipients' compliance with section 188 of the WIOA and 29 CFR Part 38. The Local-Level EOs will schedule their monitoring of recipients and/or sub-recipients in their county on an annual basis.

Equal Opportunity Employer/Program

Auxiliary aids and services are available upon request to individuals with disabilities.

TDD/TTY: Dial 711 then ask for (808) 586-8842

EXHIBITS

Exhibit A State of Hawai'i WIOA Equal Opportunity Complaint Procedures and
Forms