

Equal Opportunity Discrimination Complaint Policy and Procedures Workforce Innovation and Opportunity Act

GENERAL PROVISIONS

Section 188 of the WIOA, and the implementing regulations at 29 CFR Part 38, prohibits exclusion of an individual from participation in, denial of the benefits of, discrimination in, or denial of employment in the administration of or in connection with any programs and activities funded or otherwise financially assisted in whole or in part under Title I of WIOA 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.

The WIOA nondiscrimination regulations prohibit discrimination in all aspects of the administration, management, and operation of WIOA programs and activities. The State of West Virginia has adopted the following procedures for processing complaints alleging violations of the nondiscrimination and equal opportunity provisions in a Workforce Innovation and Opportunity Act (WIOA) Title I-financially assisted program or activity.

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 dollars and cents. 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 negotiation of issues are 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 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.

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. Complaints can be accepted by an employee in a WorkForce West Virginia One-Stop 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 to:

STATE

Vickie Elkins, EO Officer
WorkForce West Virginia
Equal Opportunity Office
112 California Avenue
Charleston, WV 25305
Phone: (304) 558-1600
TDD: (304) 558-1549

FEDERAL

Naomi M. Berry-Perez, Director
U.S. Department of Labor
Civil Rights Center (CRC)
200 Constitution Avenue
Room N-4123
Washington, DC 20210
Phone: (202) 693-6502
TDD: (202) 693-6515

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 which may be obtained from the WorkForce West Virginia Equal Opportunity office, or local Workforce Development Board. Complaint information is also available on the WorkForce West Virginia website at <http://workforcewv.org/about-us/equal-opportunity/related-links.html>.

Federal – Complainant may file a complaint with the Civil Rights Center by completing and submitting the “Civil Rights Center’s Complaint Information and Privacy Act Consent” forms. Forms may be obtained from the WorkForce West Virginia EO Officer or from the CRC. Forms are available electronically on CRC’s website, and in hard copy via postal mail upon request. Hard copy complaints may be sent to the CRC at the address listed in Section C of these procedures. Electronic forms can be found on the CRC’s website at: <https://www.dol.gov/oasam/programs/crc/DL1-2014A-Rev-April-2011.pdf>. (Reference 29 CFR Part 38.70)

Complaints must be filed in writing, either electronically or in hard copy. To be accepted as a complaint, the following information must be provided: (Reference 29 CFR Part 38.70)

- The complainant’s name, mailing address, e-mail address, if available, and telephone number (or another means of contacting the complainant).
- The identity of the respondent (the individual or entity that the complainant alleged is responsible for the discrimination).
- A description of the complainant’s allegations. This description must include enough detail to allow the WorkForce West Virginia or the US DOL Civil Rights Center to decide whether:
- WorkForce West Virginia or the Civil Rights Center, as applicable, has jurisdiction over the complaint;
- The complaint was timely filed (within 180 days);
- The complaint has merit; in other words, whether the complainant’s allegations, if true, would violate any of the nondiscrimination and equal opportunity provisions of Section 188 of the WIOA. Completing and submitting either WorkForce West Virginia or the Civil Rights Center Discrimination Complaint Form may provide the information required by this paragraph.
- The provision of the complainant’s written or electronic signature, or the written or electronic signature of the complainant’s authorized representative.

State Level Complaint Processing – A complainant must file a complaint within 180 days of the alleged act(s) of discrimination or retaliation. The complaint may be filed with either the recipient, WorkForce West Virginia (state) or the Department of Labor, Civil Rights Center (federal). WorkForce West Virginia is required by 29 CFR Part 38.72, to include the state complaint procedures, the Alternate Dispute Resolution (ADR) Mediation Election form, and the equal opportunity notice “Equal Opportunity is the Law”. WorkForce West Virginia has chosen mediation as the method of ADR to be used in the State of West Virginia. The complainant will be offered the option to participate in mediation or follow the customary state level complaint process. Any person electing to file at the state level shall allow WorkForce West Virginia 90 days from the date of receipt of complaint to process the complaint. (Reference 29 CFR Part 38.72)

If it is determined that WorkForce West Virginia does not have jurisdiction over a complaint, the complainant will immediately be notified in writing within five business days of making such determination. This Notice of Lack of Jurisdiction will include:

- A statement of the reasons for the determination.
- Notice that complainant has a right to file a complaint with the CRC within 30 days of the date on which the complainant receives the Notice of Lack of Jurisdiction

If WorkForce West Virginia does have jurisdiction, the WorkForce West Virginia EO Office will provide written notice to the complainant containing the following information:

- Acknowledgment that the complaint has been received.
- Notice that complainant has the right to be represented in complaint process.
- The equal opportunity notice, “Equal Opportunity is the Law”.
- Notice that the complainant has the right to request and receive, at no cost, auxiliary aids and services, language assistance services, and that the notice will be translated into non-English languages.

A written statement of the issue(s) raised provided to the complainant that includes the following information:

- A list of the issues raised in the complaint, and
- For each issue, a statement whether the recipient will accept the issue for investigation, or reject the issues and the reasons for rejection.
- A period for fact-finding or investigation of the circumstances underlying the complaint, which may take about 20 working days.
- A period during which the recipient attempts to resolve the complaint. The methods available to resolve the complaint must include alternative dispute resolution (ADR).

- A brochure explaining the mediation process will be attached. The option to mediate rests with the complainant. The complainant will be requested to notify the WorkForce West Virginia EO Officer within 5 days of receipt of the written notice if the complainant wishes to participate in mediation. If the complainant elects mediation, the processes outlined under Section I, Mediation, of these procedures will be followed.
- Notice that if the Notice of Final Action is issued during the 90-day period, and the complainant is dissatisfied with the decision, 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 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

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 2 days of the receipt of the Mediation Election Form. The session will begin no later than 15 calendar days after the mediator is notified.

Parties will receive notice of where and when the mediation will be conducted.

Two (2) calendar 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 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 was used successfully, a description of the resolution will be provided. A copy of the settlement agreement will be provided to the complainant and respondent within 15 days from the conclusion of the mediation session and the agreement will contain the following:

- Signatures of mediator, complainant and respondent.
- Description of the settlement of the issues.
- 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.
- If the parties do not reach an agreement under mediation, the complaint will be referred for investigation.

Breach of Settlement Agreement

A party to any agreement reached under mediation may file a complaint with the Civil Rights Center in the event the agreement is breached.

The non-breaching party may file a complaint with the Civil Rights Center within 30 days of the date on which the non-breaching party learns of the alleged breach.

If the Civil Rights Center determines that the agreement has been breached, the complaint will be reinstated processed in accordance with the recipient's procedures. (29 CFR Part 38.72)

Notice of Final Action

A written Notice of Final Action will be provided to the complainant within 90 days of the date on which the complaint was filed. The notice will contain, for each issue raised in the complaint, a statement of either:

The recipient's decision on the issue and an explanation of the reasons underlying the decision; or

A description of the way the parties resolved the issue and

If the Notice of Final Action is issued during the 90-day period, and the complainant is dissatisfied with the decision, the complainant, or his or her representative, 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 of Final Action. Only the Director of the Civil Rights Center may extend the 30-day time limit for good cause shown. The complainant has the burden of proving, to the Director, Civil Rights Center, that the time limit should be extended.

If, by the end of the 90 days from the date on which the complainant filed the complaint, WorkForce West Virginia has not completed its processing of the complaint or failed to issue a Notice of Final Action, the complainant, or the complainant's representative, may file a complaint with the Civil Rights Center within 30 days of the expiration of the 90-day period. In other words the complaint must be filed with the Civil Rights Center within 120 days of the date on which WorkForce West Virginia received the complaint.

Mediation as an Alternative Dispute Resolution Process

WorkForce West Virginia has been designated by the Governor of West Virginia as the agency to comply with Section 188 of the Workforce Innovation and Opportunity Act (WIOA) and its implementing regulations. In carrying out these duties WorkForce West Virginia conducts both compliance reviews and discrimination complaint investigations.

Mediation is an informal process that is offered as an alternative to the traditional investigative or litigation process. Mediation is a voluntary, strictly confidential, non-adversarial dispute resolution process or conference that allows people who have a dispute to come together to talk and decide for themselves how to end their dispute. The sessions are not tape-recorded or transcribed. Notes taken during the mediation are discarded. Mediation gives the parties the opportunity to discuss the issues raised in the allegation(s), clear up the misunderstandings, determine the underlying interests or concerns, find agreements and to reach a resolution. The decision to mediate is completely voluntary for the complainant. The mediator does not take sides or make decisions for people, but assists the parties in agreeing on a mutually acceptable resolution.

Mediation Election Form

I have read the information on the role of WorkForce West Virginia in the State of West Virginia equal opportunity and complaint resolution process under the Workforce Innovation and Opportunity Act (WIOA) – including the offer of Mediation as an alternative to the formal complaint investigation procedure.

Based on the information provided to me, I have voluntarily and freely made the following election with regard to Mediation.

_____ YES, I elect to avail myself of the mediation option of complaint resolution. I agree to participate in the mediation efforts led by WorkForce West Virginia EO Office and to attempt to settle the issues in dispute between the respondent and me.

_____ NO, I elect not to use mediation as an alternative method of dispute resolution, and request that the formal complaint investigation process begin as soon as this form is received in WorkForce West Virginia EO Office.

Complainant Name (Please print)

Signature

Date

Please complete the above and return it within five (5) days to:

**Vickie Elkins, EO Officer
WorkForce West Virginia
112 California Avenue
Charleston, WV 25305
304-558-1600**

**WORKFORCE WEST VIRGINIA
DISCRIMINATION COMPLAINT FORM**

Individuals eligible for, receiving services from or benefiting from programs funded by or through WorkForce West Virginia protected by various laws, regulations, rules and policies against unlawful discrimination on the basis of race, color, religion, disability, political affiliation, age, sex, and national origin.

1. Name and address of complainant _____

2. Name and address of respondent _____

Telephone Number _____ Telephone Number _____

3. Name, Address and Telephone Number of Agency/Service Provider/Employer
Name: _____ Telephone Number _____
Address: _____

4. Which of the following best describes why you believe you were discriminated against.
 Age Race Disability Political Affiliation Citizenship
 Sex Color Religion National Origin Retaliation

5. This complaint is concerns an incident or action that happened to (please check the appropriate box)
 Only me Other people and me Other people, but not me

5. To the best of your knowledge which program was involved?
 Unemployment Compensation Workforce Innovation and Opportunity Act
 Employment Service Wagner-Peyser Other _____

6. On what date(s) did the alleged discrimination take place? _____ If there is continuing discrimination, please indicate the date(s) of the most recent act(s). _____
(NOTE: Department of Labor regulations require that complaints of discrimination must be filed with 180 days of the alleged discrimination)

7. Explain, as briefly and clearly as you can, what happened, how you negatively affected or treated differently than other persons, and why you believe it is because of the basis you checked. (If necessary, attach additional sheets) Also attach any written documentation pertaining to this matter.

8. Why do you believe these events occurred?

