



STATE OF TENNESSEE
DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT
DIVISION OF WORKFORCE DEVELOPMENT
220 French Landing Drive
Nashville, TN 37243-1002
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May 9, 2012

Workforce Investment Act Memorandum Number E&T 00-06, Change 4

- Topic:** Nondiscrimination and Equal Opportunity
- Subject:** Nondiscrimination and Equal Opportunity Provisions of the Workforce Investment Act of 1998
- Purpose:** To provide uniform procedures for filing complaints alleging violations of the nondiscrimination and equal opportunity provisions of Workforce Investment Act of 1998 (WIA)
- Reference:** Section 188 of the Workforce Investment Act 1998 and the Code of Federal Regulations (CFR) 29, Part 37
- Background:** The Civil Rights Center (CRC) of the United States Department of Labor (USDOL) has been authorized by the Assistant Secretary for Administration and Management to monitor and enforce all nondiscrimination and equal opportunity regulations regarding programs receiving financial assistance from USDOL, including Section 188 of WIA of 1998.
- Instructions:** All Local Workforce Investment Areas (LWIAs) and recipients (as defined in 29 CFR Part 37) are required to adopt and publish procedures contained in this policy memorandum for processing complaints, which allege violations of the nondiscrimination and equal opportunity provisions of WIA.

The Equal Opportunity Officer (EEO) or the designated person has as one of his/her specific responsibilities the publication and adoption of these procedures to ensure that the procedures are followed.

- A. It is the responsibility of the LWIA grant recipient to develop and publish on behalf of its service providers the required procedures contained in this policy.

- B. The EOO, on behalf of the LWIA, must maintain a log of complaints that have been filed with it that allege discrimination on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief, citizenship, and/or participation in a WIA Title-I financially assisted program or activity.

The log must include:

1. Name and address of complainant
2. Basis for the complaint
3. Description of the complaint
4. Date the complaint was filed
5. Disposition of the complaint; and the date it was issued
6. Other pertinent information.

All information that could lead to the identification of a particular individual having filed a complaint must be kept confidential. Records regarding complaints and actions taken on the complaints must be maintained for a period of not less than 3 years from the date of resolution of the complaint. (29 CFR 37.39(b))

NOTE: For co-located offices, the Employment Security Division of the Department of Labor & Workforce Development maintains a similar regulation. We would recommend combining these efforts (WIA/Wagner-Peyser) where one format is used for each center.

- C. The complaint processing procedure must include:
1. Acknowledgement that the complaint has been received
 2. Notification of the right to be represented
 3. Written list of issues raised
 4. An issue statement from the recipient regarding acceptance/rejection of the issue for investigation
 5. Period of time for fact finding and/or investigation
 6. Period in which resolution will be attempted
 7. Methods available to resolve the complaint must include
 - a. an Alternative Dispute Resolution and a
 - b. Written Notice of Final Action.
- D. A person wishing to file a complaint must be made aware that he/she has a choice of where to file the complaint. They may file with the LWIA

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EOO/designated person, the TDLWD Equal Opportunity Officer, or the Director of the Civil Rights Center (CRC).

- E. The TDLWD Equal Opportunity Officer will be notified of all complaints filed with the LWIA EOO and designated persons.

In addition, the TDLWD Equal Opportunity Officer will be notified of any administrative enforcement actions or lawsuits filed against LWIAs and/or other recipients who allege discrimination under Section 188 of the Workforce Investment Act 1998 and the Code of Federal Regulations (CFR) 29, Part 37.

Contact:

Inquiries regarding this policy should be directed to Evelyn Gaines Guzman, the Tennessee Department of Labor and Workforce Development (TDLWD) Equal Opportunity Officer/Affirmative Action Officer, Employee Relations Director, 220 French Landing, 4-A, Nashville, Tennessee, 37243; telephone: 615-253-1331; TDD 711; e-mail: Evelyn.Gaines.Guzman@tn.gov; Nina Webster, State LWIA-EO Officer/Technical Educational Specialist at (615) 253-5678; e-mail: Nina.Webster@tn.gov.


Susie Bourque, Assistant Administrator
Division of Workforce Development

SB:NW:FB

Effective Date: July 1, 2000 (May 9, 2012)

Expiration Date: Until superseded or changed.

ATTACHMENT

WORKFORCE INVESTMENT ACT (WIA)

Statement of Policy

NONDISCRIMINATION AND EQUAL OPPORTUNITY PROVISIONS

Section 188 of the Workforce Investment Act of 1998 prohibits discrimination on the basis of race, color, religion, sex, national origin, age, disability, political affiliation or belief, citizenship, and status of a lawfully admitted immigrant authorized to work in the United States.

Complaint Processing:

1. **Authorization:** The United States Department of Labor (USDOL) Director of the Civil Rights Center (CRC) and the Tennessee Department of Labor and Workforce Development (TDLWD) (State) Equal Opportunity Officer has the authority to receive and investigate complaints alleging a violation of the Nondiscrimination and Equal Opportunity provisions of Section 188 of the Workforce Investment Act of 1998 and/or 29 CFR Part 37.
2. **Who May File A Complaint?** Any person, who believes that either he/she or any specific class of individuals has been or is being subjected to discrimination, which is prohibited by WIA, may by him/herself or by a representative file a written complaint. (29 CFR 37.70)
3. **Where To File?** The complaint may be filed with the Local Workforce Investment Area (WIA) recipient, the TDLWD Equal Opportunity Officer or the Director of the CRC.
4. **When To File A Complaint?** A complaint must be filed within 180 days of the alleged violation. The Director of CRC may extend the time period for good cause.
5. **Right to Representation:** Both the complainant and the respondent have the right to be represented by an attorney or other individual of their choice.
6. **Required Contents of A Complaint--**
 - (a) All complaints must be in writing.
 - (b) Complaints must be signed by the complainant or his/her authorized representative.
 - (c) The complaint must contain the name, address, telephone number, and any other means of contacting the complainant.
 - (d) The respondent must be clearly identified.

- (e) A detailed description of the complainant's allegations must be recorded.
 - (1) A determination will be made, based on the description, with regard to jurisdiction.
 - (2) The recipient will issue a statement for each allegation indicating whether it will be accepted for investigation, or rejected.
 - (3) A reason must be given for each rejected allegation.
There must be a period of time set aside for investigation and/or fact finding regarding the circumstances underlying the complaint.
 - (f) There must be a period of time in which the recipient attempts to resolve the complaint.
 - (1) Alternative dispute resolution (ADR) is mandated to be a part of the resolution process.
 - (2) The complainant must be given the choice of using the customary process or the use of the ADR.
 - (3) It is suggested that recipients state the specific ADR process they will use, the identity of the individual(s) who will conduct ADR, how the process will operate, and applicable timeframes.
 - (4) In the event of a breached agreement (under ADR), the non-breached party may file a complaint with the Director of the CRC, within 30 days of the date on which the non-breaching party learns of the alleged breach.
 - (g) A Notice of Final Action (written) is provided to the complainant within 90 days of the date on which the complaint was filed. The following information shall be contained therein:
 - (1) Recipient's decision regarding each allegation, and an explanation thereof; or
 - (2) A description of the way the parties resolved the allegations.
 - (3) Notice that the complainant has the right to file a complaint with CRC within 30 days of the date on which the Notice of Final Action is issued, if he/she is dissatisfied with the recipient's final action.
7. **TDLWD Adopted Complaint Procedure:** This procedure provides a clear, orderly, expedient compliant process through which employees, registrants, and applicants of WIA Title-I financially assisted entities file complaints of alleged discrimination.
- (a) Each entity may develop its own form. All forms must comply explicitly with the policies and procedures set forth in WIA Memorandum No. E&T 00-06, and this document. A complainant may file a complaint by completing and submitting TDLWD's Complaint Information Form or CRC's Complaint Information and

Privacy Act Consent Forms.

- (b) Each written complaint must contain all the Elements above in Item #6(a) through 6(e) excluding the subparts of 6(e) (1) through (3).
- (c) Within the initial notice sent to the complainant, the EOO must give notice to the complainant and/or recipient regarding the right of representation (by an attorney or other individual).
 - 1. The EOO must maintain a signed statement regarding the right of representation, in each compliant file.
- (d) The EOO will maintain a high level of confidentiality at all times during the processing of complaints of discrimination.
- (e) The EOO will provide written acknowledgment to the complainant that the complaint has been received.
- (f) A written statement of the issues raised in the complaint will be provided to the complainant.
 - 1. For each issue it must be stated that the issue will be accepted or rejected for investigation.
- (g) A thirty-day period from the date of receipt of the complaint will be set aside for investigation and/or fact-finding.
 - 1. This period of time can be extended only if it agreed to by the complainant, in writing.
 - 2. If the EOO finds that more time is needed and it is not agreeable to the complainant, he/she will document the need for the extra time and proceed with what has been accumulated up to that time.
- (h) Fifteen days beyond the thirty-day investigative period will be utilized by the EOO to try to resolve the issues contained in the complaint.
 - (1) An alternative dispute resolution (ADR) must be part of the resolution process.
 - (2) The complainant must make a choice whether to use ADR or the customary process.
- (i) The EOO must provide the complainant a written Notice of Final Action within ninety days of the filing date of the complaint. The Notice of Final Action shall contain the following information:

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WIA Statement of Policy

- (1) The recipient's/LWIA's decision on each issue, and an explanation of the reasons for the decision, or
- (2) A description of the way the parties resolved the issue
- (3) Notice that the complainant has thirty days from the date on which the Notice of Final Action is issued, to file a complaint with CRC if he/she is dissatisfied with the recipient's final action.