

Nevada Department of Employment, Training and Rehabilitation
Employment Security Division
Workforce Programs

Workforce Innovation and Opportunity Act (WIOA)
State Compliance Policy (SCP)

Policy Number: 4.2

Originating Office: Department of Employment, Training and Rehabilitation (DETR);
Workforce Programs

Subject: Program provisions as they relate to Nondiscrimination and Affirmative Outreach

Issued: New, replacing WIA SCP 4.2; Approved Governor's Workforce Development Board (GWDB) Executive Committee January 15, 2019; Ratified Governor's Workforce Development Board February 02, 2019.

Purpose: To communicate the nondiscrimination and equal opportunity provisions which are contained in section 188 of WIOA (29 U.S.C. 3248).

State Imposed Requirements: This directive may contain some state-imposed requirements. These requirements are printed in ***bold, italicized*** type.

Authorities/References: WIOA (P.L. 113-128), Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Americans with Disabilities Act of 1990 (ADA), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) as amended, The Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq., as amended, Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), Executive Order 13166, 29 CFR §32, 29 CFR §37.4, 29 CFR §38, 29 CFR §1614 - §1615, 1630, 20 CFR §683.285, TEGL 37-14, TEGL 1-15, TEN 20-16, Nevada SCPs

ACTION REQUIRED: Upon issuance bring this guidance to the attention of all WIOA service providers, Local Workforce Development Board (LWDB) members and any other concerned parties. Any LWDB policies, procedures, and or contracts affected by this guidance are required to be updated accordingly.

Background: The Civil Rights Center, in the Office of the Assistant Secretary for Administration and Management, U.S. Department of Labor, is responsible for administering and enforcing the nondiscrimination and equal opportunity provisions of WIOA and this part, and for developing and issuing policies, standards, guidance, and procedures for effecting compliance.

Effect of possible future exclusion from employment opportunities. A recipient must not exclude any individual from, or restrict any individual's participation in, any program or activity

based on the recipient's belief or concern that the individual will encounter limited future employment opportunities because of the individual's race, color, religion, sex, national origin, age, disability, political affiliation or belief, citizenship status, or participation in a WIOA Title I-financially assisted program or activity. (29 CFR §38.24)

Policy and Procedure:

Applicability: (29 CFR §38.2)

This part applies to:

- (1) Any recipient, as defined in §38.4(zz) (i.e. service providers, eligible training providers, required and additional One-Stop partner per Sec 121 of WIOA);
- (2) Programs and activities that are part of the one-stop delivery system and that are operated by one-stop partners listed in section 121(b) of WIOA, to the extent that the programs and activities are being conducted as part of the one-stop delivery system; and
- (3) As provided in §38.18, the employment practices of a recipient and/or one-stop partner, to the extent that the employment is in the administration of or in connection with programs and activities that are being conducted as a part of WIOA Title I or the one-stop delivery system.

Other Discriminatory Actions: (29 CFR §38.6)

A recipient must not, directly or through contractual, licensing, or other arrangements, on a prohibited basis:

- (a) Deny, limit or treat differently, an individual with respect to any opportunity to participate in a WIOA Title I-financially assisted program or activity, or afford the individual an opportunity to do so that is different from the opportunity afforded others, restrict an individual of any advantage or privilege of others, subject an individual to segregation or separate treatment, under a WIOA Title I-financially assisted program or activity;
- (b) Aid or perpetuate discrimination by providing significant assistance to an agency, organization, or person that discriminates on a basis prohibited by WIOA Section 188 or this part in providing any aid, benefit, service, or training, to registrants, applicants or participants in a WIOA Title I-financially assisted program or activity; or
- (c) Refuse to accommodate an individual's religious practices or beliefs, unless to do so would result in undue hardship, as defined in §38.4(rrr)(2).

Discrimination Prohibited Based on Sex: (29 CFR §38.7)

In providing any aid, benefit, service, or training under a WIOA Title I-financially assisted program or activity, a recipient must not directly or through contractual, licensing, or other arrangements, discriminate on the basis of sex. An individual may not be excluded from participation in, denied the benefits of, or subjected to discrimination under any WIOA Title I-financially assisted program or activity based on sex. The term sex includes, but is not limited to, pregnancy, childbirth, and related medical conditions, transgender status, and gender identity and as identified in detail in 29 CFR §38.7 (b)-(d) and 29 CFR §38.8.

Discrimination Based on Pregnancy: (29 CFR §38.8)

Discrimination on the basis of pregnancy, childbirth, or related medical conditions, including childbearing capacity, is a form of sex discrimination and a violation of the nondiscrimination provisions of WIOA and this part. Recipients may not treat persons of childbearing capacity, or those affected by pregnancy, childbirth, or related medical conditions, adversely in accessing any

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aid, benefit, service, or training under a WIOA Title I-financially assisted program or activity. In their covered employment practices, recipients must treat people of childbearing capacity and those affected by pregnancy, childbirth, or related medical conditions the same for all employment-related purposes, including receipt of benefits under fringe-benefit programs, as other persons not so affected but similar in their ability or inability to work. Related medical conditions include, but are not limited to: Lactation; disorders directly related to pregnancy, such as preeclampsia (pregnancy-induced high blood pressure), placenta previa, and gestational diabetes; symptoms such as back pain; complications requiring bed rest; and the after-effects of a delivery. A pregnancy-related medical condition may also be a disability. See §38.4(q)(3)(ii). Examples of unlawful pregnancy discrimination may include:

- (a) Refusing to provide any aid, benefit, service, or training under a WIOA Title I-financially assisted program or activity to a pregnant individual or an individual of childbearing capacity, or otherwise subjecting such individuals to adverse treatment on the basis of pregnancy or childbearing capacity;
- (b) Limiting an individual's access to any aid, benefit, service, or training under a WIOA Title I-financially assisted program or activity based on her pregnancy, or requiring a doctor's note in order for a pregnant woman to begin or continue participation while pregnant when doctors' notes are not required for participants who are similarly situated;
- (c) Denying an individual access to any aid, benefit, service, or training under a WIOA Title I-financially assisted program or activity or requiring the individual to terminate participation in any WIOA Title I-financially assisted program or activity when the individual becomes pregnant or has a child; and
- (d) Denying reasonable accommodations or modifications of policies, practices, or procedures to a pregnant applicant or participant who is temporarily unable to participate in some portions of a WIOA Title I-financially assisted program or activity because of pregnancy, childbirth, and/or related medical conditions, when such accommodations or modifications are provided, or are required to be provided, by a recipient's policy or by other relevant laws, to other similarly situated applicants or participants.

Discrimination Prohibited Based on National Origin, Including Limited English Proficiency (LEP): (29 CFR §38.9)

In providing any aid, benefit, service, or training under a WIOA Title I-financially assisted program or activity, a recipient must not, directly or through contractual, licensing, or other arrangements, discriminate on the basis of national origin, including limited English proficiency. An individual must not be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination under, any WIOA Title I-financially assisted program or activity based on national origin. National origin discrimination includes treating individual beneficiaries, participants, or applicants for any aid, benefit, service, or training under any WIOA Title I-financially assisted program or activity adversely because they (or their families or ancestors) are from a particular country or part of the world, because of ethnicity or accent (including physical, linguistic, and cultural characteristics closely associated with a national origin group), or because the recipient perceives the individual to be of a certain national origin, even if they are not. Reference details in 29 CFR§ 38.9 (b)- (i) including Appendix.

Harassment Prohibited: (29 CFR §38.10)

Harassment of an individual based on race, color, religion, sex, national origin, age, disability, or political affiliation or belief, or, for beneficiaries, applicants, and participants only, based on citizenship status or participation in any WIOA Title I-financially assisted program or activity, is a violation of the nondiscrimination provisions of WIOA and this part. Reference SCP 4.5.

Discrimination Prohibited Based on Citizenship Status: (29 CFR §38.11)

In providing any aid, benefit, service, or training under a WIOA Title I-financially assisted program or activity, a recipient must not directly or through contractual, licensing, or other arrangements, discriminate on the basis of citizenship status. Individuals protected under this section include citizens and nationals of the United States, lawfully admitted permanent resident aliens, refugees, asylees, and parolees, and other immigrants authorized by the Secretary of Homeland Security or the Secretary's designee to work in the United States. Citizenship discrimination occurs when a recipient maintains and enforces policies and procedures that have the purpose or effect of discriminating against individual beneficiaries, applicants, and participants, on the basis of their status as citizens or nationals of the United States, lawfully admitted permanent resident aliens, refugees, asylees, and parolees, or other immigrants authorized by the Secretary of Homeland Security or the Secretary's designee to work in the United States.

Discrimination Prohibited Based on Disability: (29 CFR §38.12, 29 CFR §32.12 subparts B and C and Appendix A)

In providing any aid, benefit, service, or training under a WIOA Title I-financially assisted program or activity, a recipient must not, directly or through contractual, licensing, or other arrangements, on the basis of disability.

- (a) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, service, or training, including meaningful opportunities to seek employment and work in competitive integrated settings, or is not equal to that afforded others, or is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others, or provide different, segregated, or separate aid, benefit, service, or training to individuals with disabilities, or to any class of individuals with disabilities, unless such action is necessary to provide qualified individuals with disabilities with any aid, benefit, service, or training that is as effective as those provided to others, and consistent with the requirements of the Rehabilitation Act as amended by WIOA, including those provisions that prioritize opportunities in competitive integrated employment, otherwise limit the enjoyment of any right, privilege, advantage or opportunity enjoyed by others receiving.
- (b) A recipient must not, directly or through contractual, licensing, or other arrangements, aid or perpetuate discrimination against qualified individuals with disabilities by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefit, service, or training to registrants, applicants, or participants and including the following items addressed in 29 CFR §38.12(b)-(p) and;
- (c) No qualified handicapped individual shall, because a recipient's facilities are inaccessible to or unusable by handicapped individuals, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity

to which this part applies; A recipient shall operate each program or activity to which this part applies so that when each part is viewed in its entirety it is readily accessible to qualified handicapped individuals. This paragraph does not require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by qualified handicapped individuals. However, if a particular aid, benefit, service, or training is available in only one location, that site must be made accessible or the aid, benefit, service, or training must be made available at an alternative accessible site or sites. Accessibility requires nonpersonal aids to make the program or activity accessible to mobility impaired persons. Reasonable accommodations, as defined in 29 CFR §32.3, are required for particular handicapped individuals in response to the specific limitations of their handicaps. Accommodations may take many forms based on the type of handicap and the needs of the individual. In developing appropriate accommodations, the individual should be consulted as to particular needs and;

- (d) Those items listed in 29 CFR §32 subparts B, C and Appendix A.

Accessibility Requirements/ Reasonable Accommodations: (29 CFR §38.13 & §38.14)

(a) No qualified individual with a disability may be excluded from participation in, or be denied the benefits of a recipient's service, program, or activity or be subjected to discrimination by any recipient because a recipient's facilities are inaccessible or unusable by individuals with disabilities. Recipients that are subject to Title II of the ADA must also ensure that new facilities or alterations of facilities that began construction after January 26, 1992, comply with the applicable federal accessible design standards, such as the ADA Standards for Accessible Design (1991 or 2010) or the Uniform Federal Accessibility Standards. In addition, recipients that receive federal financial assistance must meet their accessibility obligations under Section 504 of the Rehabilitation Act and the implementing regulations at 29 CFR part 32. Some recipients may be subject to additional accessibility requirements under other statutory authority, including Title III of the ADA, that is not enforced by CRC. As indicated in §38.3(d)(10), compliance with this part does not affect a recipient's obligation to comply with the applicable ADA Standards for Accessible Design.

(b) Programmatic accessibility. All WIOA Title I-financially assisted programs and activities must be programmatically accessible, which includes providing reasonable accommodations for individuals with disabilities, making reasonable modifications to policies, practices, and procedures, administering programs in the most integrated setting appropriate, communicating with persons with disabilities as effectively as with others, and providing appropriate auxiliary aids or services, including assistive technology devices and services, where necessary to afford individuals with disabilities an equal opportunity to participate in, and enjoy the benefits of, the program or activity.

(c) With regard to any aid, benefit, service, training, and employment, a recipient must provide reasonable accommodations to qualified individuals with disabilities who are applicants, registrants, eligible applicants/registrants, participants, employees, or applicants for employment, unless providing the accommodation would cause undue hardship. See the definitions of “reasonable accommodation” and “undue hardship” in §38.4(rrr) (1) and 29 CFR §38.18(a)(1)-(2).

Communications With Individuals With Disabilities: (29 CFR §38.15-§38.16)

A recipient must take appropriate steps to ensure that communications with individuals with disabilities, such as beneficiaries, registrants, applicants, eligible applicants/registrants, participants, applicants for employment, employees, members of the public, and their companions are as effective as communications with others. For purposes of this section, “companion” means a family member, friend, or associate of an individual seeking access to an aid, benefit, service, training, program, or activity of a recipient, who, along with such individual, is an appropriate person with whom the recipient should communicate.

Auxiliary Aids and Services: A recipient must furnish appropriate auxiliary aids and services where necessary to afford individuals with disabilities, including beneficiaries, registrants, applicants, eligible applicants/registrants, participants, members of the public, and companions, an equal opportunity to participate in, and enjoy the benefits of, a WIOA Title I-financially assisted service, program, or activity of a recipient. Reference 29 CFR §38.15(a)(2)(ii) for auxiliary aids or service needs description.

Interpreters: A recipient must not require an individual with a disability to bring another individual to interpret for him or her. Reference 29 CFR §38.15(a)(3)(ii)-(iii)

Video Remote Interpreting (VRI) Services: Reference 29 CFR §38.15(a)(4)

Electronic and Information Technology/Telecommunication/Fundamental Alterations: Reference 29 CFR §38.15(a)(5)

Information and Signage: A recipient must ensure that interested individuals, including individuals with visual or hearing impairments, can obtain information as to the existence and location of accessible services, activities, and facilities.

A recipient must provide signage at the public entrances to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities. The signage provided must meet the Standards for Accessible Design under the Americans with Disabilities Act. Alternative standards for the signage may be adopted when it is clearly evident that such alternative standards provide equivalent or greater access to the information. See 36 CFR part 1191, appendix B, section 103. The international symbol for accessibility must be used at each primary entrance of an accessible facility. (29 CFR §38.15(a)(5)(c))

Service Animals: Generally, a recipient shall modify its policies, practices, or procedures to permit the use of a service animal by an individual with a disability.

Individuals with disabilities must be permitted to be accompanied by their service animals in all areas of a recipient's facilities where members of the public, participants in services, programs or activities, beneficiaries, registrants, applicants, eligible applicants/registrants, applicants for employment and employees, or invitees, as relevant, are allowed to go.

Inquiries: A recipient must not ask about the nature or extent of a person's disability, but may make two inquiries to determine whether an animal qualifies as a service animal. A recipient may ask if the animal is required because of a disability and what work or task the animal has been trained to perform. A recipient must not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal. Generally, a recipient may not make these inquiries about a service animal when it is readily apparent that an animal is trained to do work or perform tasks for an individual with a disability (e.g., the dog is observed guiding an individual who is blind or has low vision, pulling a person's wheelchair, or providing assistance with stability or balance to an individual with an observable mobility disability).

A service animal must be under the control of its handler. A service animal must have a harness, leash, or other tether, unless either the handler is unable because of a disability to use a harness,

leash, or other tether, or the use of a harness, leash, or other tether would interfere with the service animal's safe, effective performance of work or tasks, in which case the service animal must be otherwise under the handler's control (e.g., voice control, signals, or other effective means). Reference 29 CFR §38.16 for *Exceptions, Exclusions, Care or Supervision, Access to Facilities and Surcharges*.

Mobility Aids and Devices: (29 CFR §38.17)

Use of wheelchairs and manually-powered mobility aids. A recipient must permit individuals with mobility disabilities to use wheelchairs and manually-powered mobility aids, such as walkers, crutches, canes, braces, or other similar devices designed for use by individuals with mobility disabilities, in any areas open to pedestrian use.

Use of other power-driven mobility devices. A recipient must make reasonable modifications in its policies, practices, or procedures to permit the use of other power-driven mobility devices by individuals with mobility disabilities, unless the recipient can demonstrate that the class of other power-driven mobility devices cannot be operated in accordance with legitimate safety requirements that the recipient has adopted.

Assessment factors. In determining whether a particular other power-driven mobility device can be allowed in a specific facility as a reasonable modification under paragraph (b)(1) of this section, a recipient must consider—

- (a) The type, size, weight, dimensions, and speed of the device;
- (b) The facility's volume of pedestrian traffic (which may vary at different times of the day, week, month, or year);
- (c) The facility's design and operational characteristics (e.g., whether its WIOA Title I-financially assisted service, program, or activity is conducted indoors, its square footage, the density and placement of stationary devices, and the availability of storage for the device, if requested by the user);
- (d) Whether legitimate safety requirements can be established to permit the safe operation of the other power-driven mobility device in the specific facility; and
- (e) Whether the use of the other power-driven mobility device creates a substantial risk of serious harm to the immediate environment or natural or cultural resources, or poses a conflict with Federal land management laws.

Employment Practices: (29 CFR §38.18)

a) Employment practices covered. It is an unlawful employment practice to discriminate on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity), national origin, age, disability, or political affiliation or belief in the administration of, or in connection with:

- (1) Any WIOA Title I-financially assisted program or activity; and
- (2) Any program or activity that is part of the one-stop delivery system and is operated by a one-stop partner listed in Section 121(b) of WIOA, to the extent that the program or activity is being conducted as part of the one-stop delivery system.

(b) Employee selection procedures. In implementing this section, a recipient must comply with the Uniform Guidelines on Employee Selection Procedures, 41 CFR part 60-3, where applicable.

(c) Standards for employment-related investigations and reviews. In any investigation or compliance review, the Director must consider Equal Employment Opportunity Commission (EEOC) regulations, guidance and appropriate case law in determining whether a recipient has engaged in an unlawful employment practice.

(d) Section 504 of the Rehabilitation Act. As provided in §38.3(b), 29 CFR part 32, subparts B and C and appendix A, which implement the requirements of Section 504 pertaining to employment practices and employment-related training, program accessibility, and reasonable accommodation, have been adopted by this part. Therefore, recipients must comply with the requirements set forth in those regulatory sections as well as the requirements listed in this part.

(e) Employers, employment agencies, or other entities. (1) Recipients that are also employers, employment agencies, or other entities subject to or covered by Titles I and II of the ADA should be aware of obligations imposed by those titles. See 29 CFR part 1630 and 28 CFR part 35.

(2) Recipients that are also employers, employment agencies, or other entities subject to or covered by Section 503 of the Rehabilitation Act of 1973 (29 U.S.C. 793) must meet their obligations imposed by that provision.

(f) Immigration and Nationality Act. Similarly, recipients that are also employers covered by the anti-discrimination provision of the Immigration and Nationality Act should be aware of the obligations imposed by that provision. See 8 U.S.C. 1324b, as amended.

(g) State and local requirements. This section does not preempt consistent State and local requirements.

Effect on other Obligation: (29 CFR §38.3)

(a) A recipient's compliance with this part will satisfy any obligation of the recipient to comply with 29 CFR part 31, the Department's regulations implementing Title VI of the Civil Rights Act of 1964, as amended (Title VI), and with subparts A, D, and E of 29 CFR part 32, the Department's regulations implementing Section 504 of the Rehabilitation Act of 1973, as amended (Section 504).

(b) 29 CFR part 32, subparts B and C and appendix A, the Department's regulations which implement the requirements of Section 504 pertaining to employment practices and employment-related training, program accessibility, and reasonable accommodation, are hereby adopted by this part. Therefore, recipients must comply with the requirements set forth in those regulatory sections as well as the requirements listed in this part.

(c) This part does not invalidate or limit the obligations, remedies, rights, and procedures under any Federal law, or the law of any State or political subdivision, that provides greater or equal protection for the rights of persons as compared to this part:

(1) Recipients that are also public entities or public accommodations, as defined by Titles II and III of the Americans with Disabilities Act of 1990 (ADA), should be aware of obligations imposed by those titles.

(2) Similarly, recipients that are also employers, employment agencies, or other entities covered by Title I of the ADA should be aware of obligations imposed by that title.

(d) Compliance with this part does not affect, in any way, any additional obligations that a recipient may have to comply with applicable federal laws and their implementing regulations, such as the following:

(1) Executive Order 11246, as amended;

(2) Executive Order 13160;

- (3) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 793 and 794);
- (4) The affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (38 U.S.C. 4212);
- (5) The Equal Pay Act of 1963, as amended (29 U.S.C. 206d);
- (6) Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e et seq.);
- (7) The Age Discrimination Act of 1975, as amended (42 U.S.C. 6101);
- (8) The Age Discrimination in Employment Act of 1967, as amended (29 U.S.C. 621);
- (9) Title IX of the Education Amendments of 1972, as amended (Title IX) (20 U.S.C. 1681);
- (10) The Americans with Disabilities Act of 1990, as amended (42 U.S.C. 12101 et seq.); and
- (11) The anti-discrimination provision of the Immigration and Nationality Act, as amended (8 U.S.C. 1324b).

Reference definitions in 29 CFR §38.4.