

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

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

Policy Number: 4.3

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

Subject: Discrimination Grievance/Complaint Procedures

Issued: July 2005 Workforce Investment Act (WIA)

Revised: October 2020 Workforce Innovation Opportunity Act (WIOA)

Purpose: To establish the procedure for the prompt and equitable resolution of complaints that alleges violation of the Equal Opportunity provisions of WIOA.

State Imposed Requirements: This directive does not contain state-imposed requirements.

Authorities/References: 29 CFR Part 38, §38.11, §38.29, §38.37, §38.39, §38.69, §38.70, §38.71, §38.72, §38.73, §38.74, §38.75, §38.76, §38.77, §38.78, §38.80, §38.81, §38.84, §38.87, §38.90, §38.111, Nevada SCPs

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

Background: 29 CFR Part 38, complaint processing procedures must provide for local processing of discrimination complaints. Even though the procedures list the formal process of resolution, the State encourages informal resolution at all levels. There is nothing in the formal process that denies any individual the right to seek resolution through civil action authorized by federal, state and local laws, and the complainant can file directly with the Civil Rights Center (CRC).

Policy and Procedure:

PRINCIPLES GOVERNING COMPLAINTS:

A. Consultation is available at the state level through its Equal Opportunity Officer prior to

complaint filing and during the informal process of a complaint resolution.

- B. Complaints may be filed at the local or federal level. Complainants who elect to file at the local level must allow the local entity 90-days to process the complaint.
- C. In compliance with the EO provisions of WIOA, all registrants, applicants, eligible applicants for employment or program participation, employees, sub-recipients and participants shall be provided with the Participant/Employee Nondiscrimination Signature Notice which identifies the right to file and the time frames. [29 CFR 38.34] The signature notice shall include the State and local Equal Opportunity Officers' names, addresses and telephone numbers. [29 CFR 38.35]
- D. CRC Complaint Information & Privacy Act Consent forms and grantees' policy for filing discrimination complaints shall be easily accessible to all employees and participants.
- E. No person filing a complaint shall be the victim of harassment, reprisal, coercion or any form of discrimination or retaliation for having filed a complaint or having furnished information to or assisted or participated in an investigation, review or hearing. [29 CFR 38.19] It is a person's right to file a complaint and express their opinion in a legal allegation.
- F. Complainants have the right to withdraw their complaint in writing at any time prior to the formal hearing.
- G. Complaints may be amended to clarify issues, but not to add new allegations.
- H. Complainants have the right to be represented by a properly delegated person of their own choosing at all levels of the complaint process (at their own expense). [29 CFR 38.71]

GRANTEE RESPONSIBILITIES:

- A. The grantee's personnel manual shall include the policy for filing complaints. The grantee shall also make known the EO (state and local) officers' name, address, and telephone number; and the location of the complaint procedure and forms on a regular basis through memoranda, staff meetings or other means of communication. Subgrantees, subrecipients, and service providers will be provided the procedure and are required to process discrimination complaints within the parameters provided. Please refer to 29 CFR 38.72 for specific information regarding minimum requirements.
- B. The Grantee is responsible for ensuring that all service providers follow the grantees complaint processing procedure. [29 CFR 38.73]
- C. Grantees shall inform the State immediately upon receipt of a formal grievance and shall, within seven (7) days, forward to the State: the name and address of the complainant, nature and basis for complaint, and date the complaint was filed. Available information shall be

entered onto the Discrimination Complaint Log [29 CFR 38.41(c)] and the grantee shall begin to investigate and gather information regarding the complaint. The hearing date; the date the investigation was completed; the date the informal decision was issued; or the date of formal resolution and the nature of the final disposition shall be forwarded to State as soon as known.

- D. The grantee shall determine whether it has jurisdiction over the complaint; the complaint was timely filed; and the complaint has apparent merit, whether the allegation, if true, would violate any of the nondiscrimination and equal opportunity provisions. If not, grantee is required to notify complainant in writing. This Notice of Lack of Jurisdiction must include: [29 CFR 38.74]
 - 1. A statement of the reasons for the determination; [29 CFR 38.74(a)]
 - 2. Notice that the complainant has a right to file a complaint with CRC within thirty (30) days of the date of which the complainant receives the Notice. [29 CFR 38.74(b)]
- E. The grantee is required to conduct an investigation and issue a written Notice of Final Action no later than ninety (90) days from the date the complaint was received. [29 CFR 38.76]
- F. The grantee must make certain the complainant is aware of all processing time frames as outlined in Section Processing Time Frames below.
- G. Grantees shall maintain (for a period of three (3) years after the end of the applicable program year), or where no complaints have been filed have written procedures requiring the maintenance of, a log of complaints filed with the grantee and its subrecipients which: identifies the nature and basis for each complaint; lists the dates the complaint was filed and the investigation was completed; and includes the date and nature of the final disposition.[29 CFR 38.43(2b)]

FILING PROCEDURES:

- A. **Who may file:** Any person (registrant, applicant, eligible applicant, participant, subrecipient, funding applicant, employee, applicant for employment) may file who believes that he or she or any specific class of individuals has been or is being subjected to discrimination prohibited by WIOA or 29 CFR Part 38 on the basis of race, color, national origin, religion, sex, age, disability, political affiliation or belief and, for beneficiaries only, citizenship or participation in WIOA. The complaint must be in writing and filed by the complainant or by an authorized representative. [29 CFR 38.69]
- B. **Where to file:** The complainant may file with the local entity or with the Civil Rights Center (CRC). If the complainant elects to file the complaint at the local level, it shall be directed to the Equal Opportunity Officer of the grantee. At the federal level, it shall be directed to: Director, Civil Rights Center, 200 Constitution Ave., NW Room N. 4143,

Washington, DC, 20210. [29 CFR 38.70]

- C. For consultation prior to filing a complaint or during the informal resolution process at the local level, the complainant may consult with the DETR Equal Opportunity Officer.
- D. **When to file:** The complaint must be filed within 180 days of the alleged discrimination. Only the Director of CRC, for good cause shown, may extend the filing time. [29 CFR 38.69]
- E. **What to include in the complaint:** Written complaints must be signed and dated by the complainant or authorized representative. Oral complaints may be accepted and processed at the sole discretion of the State or the Grantee. CRC does not accept oral complaints. The date the complaint is received becomes the official filing date of the complaint. (The complaint must be added to the complaint log and State must be notified immediately.) The complainant must provide the following information in the original filing: [29 CFR 38.70]
 - 1. . Complainant's full name, mail address, and if available, email address (or specify another means of contact).
 - 2. Identify the respondent (the person or agency the complaint is against).
 - 3. A statement of the complainant's allegations in sufficient detail to allow the grantee to determine (1) whether the complaint falls under the grantee's jurisdiction; (2) was timely filed; and (3) has apparent merit. The complainant may complete CRC's Complaint Information Form and accompanying Privacy Act Consent Form to supply this information.
 - 4. Provide written or electronic signature either by the complainant or a representative of the complainant.

Note: Absence of any of the required information shall not constitute grounds for dismissal of the complaint.

- F. The *State* is required to notify the Civil Rights Center of any administrative enforcement actions or lawsuits filed alleging discrimination on the ground of race, color, religion, sex, national origin, age, disability, political affiliation, or belief; or for beneficiaries, applicants, and participants only, citizenship or participation in WIOA. [29 CFR 38.42]

PROCESSING TIME FRAMES:

- A. If the complainant elects to file with the recipient, he or she shall allow the recipient ninety (90) days to process the complaint.
 - 1. Within ninety (90) days, the grantee shall offer a resolution of the complaint to the complainant and shall notify the complainant of his or her right to file a complaint

with the Director of CRC and inform the complainant that this right must be exercised within thirty (30) days after the date on which the complainant receives the notice [29 CFR 38.72]

2. If, by the end of ninety (90) days, the grantee has not completed its processing of the complaint or has failed to notify the complainant of the resolution, the complainant or his or her representative may, within thirty (30) days of the expiration of the ninety (90) day period or within one hundred and twenty (120) days of the date on which the complaint was filed with the recipient, file with the Director of CRC. [29 CFR 38.76]
3. The Director of CRC may extend the thirty (30) day limit for good cause shown. [29 CFR 38.77]
4. The grantee shall notify the complainant immediately in writing upon determining that it does not have jurisdiction over the complaint. The notice shall be in writing, include reasons for determination, and state the complainant's right to file with the Director of CRC within thirty (30) days of the notice. [29 CFR 38.74]

B. Informal Conference:

While in preparation for the hearing, both the respondent and complainant are encouraged to attempt informal resolution. The grantee shall encourage an informal conference and provide an impartial grievance officer to attempt a resolution of the problem(s).

C. Notice of Hearing: [29 CFR 38.111]

1. Prior to scheduling a hearing, the grantee must conduct an investigation and issue findings within sixty (60) days to the State. If the evidence substantiates the complaint the Grantee should attempt resolution informally with the complainant. In the event an informal resolution cannot be met, the Grantee must:
 - a. Conduct a hearing by an impartial independent hearing officer within thirty (30) days of filing of grievance/complaint;
 - b. Grantee shall notify the complainant and the respondent of the Notice of Hearing not less than ten (10) days prior to the date of the hearing by certified mail (return receipt requested). The time of the hearing may be earlier if mutually agreed to by both parties.
 - c. The "Notice of Hearing" shall be in writing and include the following information:
 - i. Grievance/complaint case number, name of complainant, name of respondent, date of grievance/complaint;
 - ii. Date, time and location of the hearing before an impartial hearing officer and an opportunity to present evidence;

2. A statement of the alleged violation(s).
3. While in preparation for the hearing, both the respondent and complainant are encouraged to attempt informal resolution. A grantee grievance officer will conduct an informal conference in an attempt to resolve the problem(s).
4. A request for a five-day postponement may be made by either party upon a showing of good cause to the hearing officer, provided the hearing is still conducted within thirty (30) days of the filing of the grievance.
5. Prior to actual beginning of the hearing the complainant has the right to withdraw the grievance/complaint.
6. An impartial and independent hearing officer shall be designated by the Grantee.

D. Rules of the Hearing:

1. The strict rules of evidence will be waived since the hearing shall be conducted in an informal matter by both parties in order to obtain full disclosure of all the facts;
2. The presentation of both written and oral testimony will be allowed;
3. Both parties may present witnesses and have the right to cross-examine the witnesses;
4. Both parties have the right to examine all relevant records and documents submitted;
5. If either the complainant or the respondent fails to appear at the hearing, the impartial hearing officer shall render a decision based on the review of all available information;
6. At the conclusion of the hearing, the hearing officer shall submit a written recommendation to the Grantee;
7. All hearing records, depositions, exhibits and other supporting documentation will be forwarded by the hearing officer to the State for record retention immediately following the hearing determination.

E. Conducting the Hearing:

1. Since the hearing will be conducted in an informal manner, the strict rules of evidence will be waived.
2. The hearing officer will: insure the hearing is recorded and a record of the hearing

is made available to all parties, if requested; begin the hearing by informing both parties of the issues involved; identify that all testimony is under oath; explain the hearing procedures and that the complainant bears the burden of proving the allegation(s) in the complaint; and determine the order of evidence and its relative significance.

3. It shall be the responsibility of the hearing officer to maintain the dignity and protect the rights of both parties.

F. Decision:

1. The grantee is required to issue a written decision not later than ninety (90) days of the filing of the grievance. The decision must be delivered by certified mail, return receipt requested, to both complainant and respondent and include the following:
 - a. Case grievance/complaint number, names of complainant and respondent;
 - b. Statement of alleged violations;
 - c. Decision and reason(s) for decision;
 - d. Statement of corrective action, if any, to be taken; and,
 - e. Notice of the right to request a review by the Governor; the request must be made within ten (10) days of receipt of the adverse decision.

Special Rule:

If the decision is not given within the ninety (90) day period or if an unsatisfactory decision was made, the complainant has the right to request a review by the Governor. The request must be made within fifteen (15) days from the date on which the complainant should have received the decision.