



ARIZONA DEPARTMENT OF ECONOMIC SECURITY

WORKFORCE INNOVATION AND  
OPPORTUNITY ACT (WIOA)  
TITLE I POLICY MANUAL

CHAPTER 2 -Section 700

SUBJECT: Equal Opportunity & Nondiscrimination

**700 EQUAL OPPORTUNITY & NONDISCRIMINATION**

All recipients, as defined at 29 CFR § 38.4(zz), under the Workforce Innovation and Opportunity Act (WIOA) Title I are responsible for ensuring Equal Opportunity (EO) and nondiscrimination in programs and activities funded in whole or in part under WIOA Title I. Local Workforce Development Boards (LWDBs) and subrecipients of the Arizona Department of Economic Security (DES) must develop policies to ensure that all entities approved for WIOA Title I funds, and all one-stop partners in the Local Workforce Development Area (LWDA) to the extent the partner's services are conducted as part of the one-stop delivery system, are in compliance with 29 CFR § 38 and Section 188 of WIOA. This responsibility includes compliance with all nondiscrimination requirements in the administration and operation of programs, activities, and employment as provided by WIOA Section 188 and 29 CFR § 38. These regulations apply to all programs and activities that are operated by ARIZONA@WORK partners as part of the ARIZONA@WORK system.

All recipients and subrecipients under WIOA Title I are directly responsible for compliance with:

- A. Federal nondiscrimination laws, regulations, guidelines, and directives;
- B. State nondiscrimination laws, executive orders, regulations, and guidelines;
- C. Local nondiscrimination ordinances;
- D. EO and non-discrimination policies, procedures, administrative directives, and the Nondiscrimination Plan (NDP) found at the following website  
<https://des.az.gov/services/employment/workforce-development-act/workforce-investment-act-wioa-equal-opportunity>);
- E. Tribal Employment Rights Ordinances (TERO), as applicable; and
- F. Terms and conditions of contracts and agreements established by DES.

## **701 GENERAL PROHIBITION ON DISCRIMINATION**

Recipients and subrecipients of WIOA Title I funds must comply with the nondiscrimination provisions found in Section [188](#) of WIOA and 29 CFR [§ 38](#). Subject to the provisions of 29 CFR [§ 38.3](#), DES, LWDBs, subrecipients, ARIZONA@WORK partners, service providers, including eligible training providers, one-stop operators (OSO), work-based training providers, on-the-job training (OJT) employers), and Work Experience (WEX) employers must not discriminate when:

- A. Deciding who will be enrolled in, or have access to, any WIOA Title I programs, services, or activities, including programs, services, and activities provided by an ARIZONA@WORK partner as part of the one-stop delivery system;
- B. Providing opportunities in, or treating any person with regard to, WIOA Title I programs, services, or activities, including programs, services, and activities provided by an ARIZONA@WORK partner as part of the one-stop delivery system; and
- C. Making employment decisions in the administration of, or in connection with, WIOA Title I programs, services, or activities, including programs, services, and activities provided by an ARIZONA@WORK partner as part of the one-stop delivery system.

## **702 EQUAL OPPORTUNITY OFFICER**

EO Officers play a vital role in ensuring compliance with the EO and nondiscrimination requirements of WIOA Section [188](#) and 29 CFR [§ 38](#).

### **.01 State WIOA EO Officer**

DES must ensure the appointment of a State WIOA EO Officer, as required, who will report directly to the appropriate designated State agency official and who must not be in a position that would constitute a conflict of interest. The State WIOA EO Officer is responsible for ensuring that all WIOA Title I programs are operated in a nondiscriminatory manner. State WIOA EO Officers duties include:

- A. Serving as a DES liaison to the United States Department of Labor (USDOL) Civil Rights Center (CRC);
- B. Developing the NDP, which includes actions the State and LWDBs

will take to ensure all WIOA Title I programs, program operators, and activities are complying with Equal Employment Opportunity requirements in Section [188](#) and 29 CFR [§ 38](#).

- C. Monitoring LWDBs and ARIZONA@WORK partners to ensure WIOA Title I programs and/or activities are operating in a nondiscriminatory manner. The EO Officer prepares reports to:
  - 1. Notify LWDBs of the results;
  - 2. Advise of any needed corrective actions; and
  - 3. Monitors corrective actions for completion and compliance;
- D. Reviewing the State's and LWDBs' written policies annually, to ensure the policies are nondiscriminatory;
- E. Developing, coordinating, providing oversight, researching, analyzing data and preparing reports, revising policies and procedures for EO and civil rights, as well as other communications relative to programmatic performance on assigned investigations (i.e., determines nature, scope, and direction of the investigation);
- F. Conducting research and training concerning EO and nondiscrimination requirements;
- G. Writing correspondence and reports regarding findings of investigations;
- H. Providing appropriate resource and referral information for complainants and for members of the general public relative to discrimination and employment law;
- I. Reviewing and analyzing complaints for WIOA jurisdiction and basis of discrimination;
- J. Reviewing data and information to discern specific trends or patterns which could reflect possible accessibility issues or need for targeted outreach;
- K. Initiating and coordinating meetings to provide information to, or resolve issues with, contractors, programs, or other groups, both within and outside DES and/or the general public;
- L. Providing technical assistance and training, as required, to

contracted providers and DES staff relating to the implementation and operation of contracted activities and requirements within designated LWDBs and other ARIZONA@WORK partners;

- M. Interpreting federal and State laws, regulations, policies, and procedures related to program services, as well as DES Division of Employment and Rehabilitation Services' (DERS'), LWDBs', and ARIZONA@WORK partners' policies and procedures, to ensure compliance with EO and civil rights;
- N. Developing and publishing EO procedures for filing discrimination complaints, and the procedures for processing such, including the tracking of complaints filed against the recipient, developing procedures for investigating and resolving complaints filed against the LWDB, DES\DERS or any other ARIZONA@WORK partner, ensuring such procedures are followed, and making procedures available to the public in appropriate languages and formats;
- O. Assisting in the client advocacy process as it relates to issues with contractors and ARIZONA@WORK partner-provided programs for designated LWDBs;
- P. Overseeing the development and implementation of the State of Arizona's NDP under 29 CFR § 38.54;
- Q. Preparing and presenting EO information and/or concerns to executive leadership, regional directors, managers, and supervisors;
- R. Maintaining competency by attending EO Officer and staff training, as required by the Director of the CRC; and
- S. Performing related work, as required.

## **.02 Local Workforce Development Board EO Officer**

Each LWDB must designate an EO Officer who does not hold another position that would constitute a conflict of interest. The LWDB EO Officer is responsible for ensuring EO and nondiscrimination in the administration and in the operation of programs, activities, and services within the ARIZONA@WORK system in the LWDA, which include:

- A. Serving as the LWDBs liaison with the CRC and the DES Office of Equal Opportunity (OEO);

- B. Conducting monitoring reviews of the ARIZONA@WORK Job Centers, ARIZONA@WORK partners, and service providers, including OSOs, eligible training providers, and affiliates that are part of the LWDB's ARIZONA@WORK system, to ensure compliance with the State's NDP, and the EO and nondiscrimination requirements of WIOA Section [188](#) and 29 CFR Part [38](#);
- C. Providing annual EO training for ARIZONA@WORK Job Center staff, service providers, and affiliates, including partners who are providing services virtually.
- D. Developing and publishing the LWDB's procedures for discrimination complaints, including tracking the discrimination complaints filed against the LWDB and/or its service providers and partners, developing procedures for investigating and resolving complaints filed against the LWDB, making sure those procedures are followed, making them available to the public in appropriate languages and formats, and the procedures for filing a complaint;
- E. Processing and investigating discrimination complaints in the LWDB;
- F. Reviewing LWDB written policies to ensure they are nondiscriminatory;
- G. Providing reports of all EO matters (i.e., the Two Standard Deviation Report and/or the 80 Percent Rule Report in the State's system of record) to the LWDB Director;
- H. Ensuring that brochures, pamphlets, flyers, and other publications and materials, provided in written or oral form, electronic or hard copy formats, that describe any WIOA Title I funded program or activity to customers, staff, or the general public, include the EO Tagline "Equal Opportunity Employer/Program. Auxiliary aids and services are available upon request to individuals with disabilities";
- I. Ensuring reasonable efforts are made to provide language services, interpretation, or translation, free of charge, for LEP individuals;
- J. Ensuring each contract, agreement, or application using WIOA Title I funds includes, in its entirety and without changes, EO and

nondiscrimination assurance language found at 29 CFR Part [38.25\(a\)](#). For smaller contracts or agreements, such as OJT, the following reference to the language may be used: “The assurances at 29 CFR Part [38.25\(a\)](#) apply to this contract/agreement”;

- K. Subject to the provisions of 29 CFR § 38.3, ensuring each program or activity, when viewed in its entirety, is operated in a manner that makes it accessible to qualified individuals with a disability. This may include making a program available at an alternative accessible facility. Program accessibility also requires the provision of auxiliary aids or services, such as qualified interpreters on site or through video remote interpreting services, exchange of written notes, voice, text, and audio-based telecommunications products and systems, videotext displays, telephone handset amplifiers, assistive listening systems, or other effective aids for individuals with hearing impairments, braille materials and displays, large print materials, accessible electronic and information technology, or other effective aids;
- L. Notifying the State WIOA EO Officer and the Director of the CRC of any administrative enforcement actions or lawsuits filed against the LWDB and/or its service providers, and partners alleging discrimination on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation, or belief and, for beneficiaries only, citizenship or participation in WIOA Title I programs or activities; and
- M. Maintaining competency by attending EO and nondiscrimination training.

## **704 EO IS THE LAW POSTER**

Each LWDB must prominently display the “Equal Opportunity is the Law” poster, in reasonable numbers and places where customers and staff can easily see it, in English or other appropriate languages, as determined by the LWDB. The information contained in the poster must also be presented in every orientation to new participants, new employees, and/or the general public. Discussion of the rights and responsibilities under the nondiscrimination and EO provisions of WIOA, including the right to file a complaint of discrimination at the local, State, or federal level is required, as described at 29 CFR § 38.39.

Additionally, the information in the “Equal Opportunity is the Law” poster must be,

at a minimum:

- A. Disseminated in internal memoranda and other written or electronic communications with staff;
- B. Included in employee and participant handbooks or manuals, regardless of form, including electronic and paper form if available; and
- C. Provided to each participant and employee and made part of each employee and participant file in paper or electronic files.

## **705 EO MONITORING**

State and Local EO Officers are responsible for monitoring recipient programs and ensuring compliance with nondiscrimination and EO provisions of WIOA Section [188](#) and 29 CFR [§ 38](#).

### **.01 State-Level EO Monitoring**

The State WIOA EO Officer must monitor LWDBs for nondiscrimination and EO provisions of WIOA Section [188](#) and 29 CFR [§ 38](#) annually. The State WIOA EO Officer is responsible for:

- A. Ensuring compliance with the nondiscrimination and EO provisions of WIOA Section [188](#) and 29 CFR [§ 38](#), and negotiating with the LWDB, where appropriate, to secure voluntary compliance when noncompliance is found;
- B. Monitoring and investigating each LWDBs activities on an annual basis to ensure compliance with WIOA Section [188](#) and 29 CFR [§ 38](#), including determining whether each LWDB is conducting its WIOA Title I programs or activities in a non-discriminatory way. At a minimum, each annual monitoring review must include:
  - 1. A statistical or other quantifiable analysis of records and data kept under 29 CFR [§ 38.41](#), including analysis by race/ethnicity, sex, LEP, preferred language, age and disability status using the Two Standard Deviation Report and/or the 80 Percent Rule Report;
  - 2. An investigation of any significant differences identified in (A) of this Section in the participation of programs, activities, or

employment provided by the LWDB, to determine whether these differences appear to be caused by discrimination. The investigation must be conducted through a review of the LWDB's records or any other appropriate means; and

3. An assessment to determine whether the recipient has fulfilled its administrative obligations under WIOA Section [188](#) or 29 CFR [§ 38](#) (e.g., recordkeeping, notice and communication) and any duties included in the NDP.
- C. Developing and publishing discrimination complaint processing procedures, tracking discrimination complaints, developing procedures for investigating and resolving discrimination complaints, and developing procedures for filing a discrimination complaint; all of which must be available to the public in appropriate languages and formats.
  - D. Participating in training to maintain competency as it relates to WIOA Title I, EO, and nondiscrimination.
  - E. Developing and implementing the NDP.

## **.02 LWDB-Level EO Monitoring**

LWDBs are responsible for monitoring all ARIZONA@WORK Job Centers, OSOs, service providers, including eligible training providers, work-based training providers (OJT employers), WEX employers, subrecipients and affiliates that are part of the LWDB ARIZONA@WORK system to ensure compliance with the State of Arizona's NDP and the EO and nondiscrimination requirements of WIOA Section [188](#) and 29 CFR Part 38. LWDB and EO Officer responsibilities include:

- A. Monitoring and investigating all ARIZONA@WORK Job Centers and affiliate sites, OSOs, eligible training providers, service providers, and other ARIZONA@WORK partner Title I activities, on an annual basis, to ensure compliance with WIOA Section [188](#) and 29 CFR [§ 38](#).
- B. Conducting onsite reviews of all ARIZONA@WORK Job Centers and affiliate sites, OSOs, and service providers – including eligible training providers, work-based training providers (OJT employers), WEX employers, and subrecipients. If the one-stop operator is the



local board the designated EO Officer must be designated in the local EO policy.

- C. Evaluating all ARIZONA@WORK Job Centers and affiliate sites, OSOs, eligible training providers, service providers, and other ARIZONA@WORK partner Title I activities– including, work-based training providers (OJT employers) and WEX employers, subrecipients and affiliates, to assess their capability to provide reasonable accommodations.

## **706 EO INVESTIGATIONS**

If the LWDB EO Officer determines there may be violations of WIOA Section [188](#) and 29 CFR [§ 38](#), the LWDB EO Officer must notify the State EO officer of the alleged violation. The investigation must include:

- A. A statistical or other quantifiable analysis of records and data kept under 29 CFR [§ 38.41](#), including analysis by race/ethnicity, sex, LEP, preferred language, age, and disability status using the Two Standard Deviation Report and/or the 80 Percent Rule Report in the State’s system of record.
- B. An investigation of any significant differences identified in (A) of this section in the participation of programs, activities, or employment provided by the all ARIZONA@WORK Job Centers and affiliate sites, OSOs, service providers, including eligible training, work-based training (OJT employers), WEX employers, and subrecipients to determine whether these differences appear to be caused by discrimination. The investigation may be conducted through a review of the LWDB’s records or any other appropriate means.
- C. An assessment to determine whether the recipient has fulfilled its administrative obligations under WIOA Section [188](#) or 29 CFR [§ 38](#) (e.g., recordkeeping, notice and communication) and any duties included in the NDP.

## **707 PROHIBITION OF DISABILITY DISCRIMINATION**

Subject to the provisions of 29 CFR [§ 38.3](#), discrimination based on disability, in the provision of any aid, benefit, service, or training under WIOA Title I programs

or activities, directly or through contractual, licensing, or other arrangements, is prohibited.

**.01 Discrimination Based on Disability**

- A. Discrimination based on disability includes:
  - 1. Denying a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, service, or training, including opportunities to seek employment and work in competitive integrated settings.
  - 2. Not providing reasonable accommodations that would allow an individual with a disability to participate in or benefit from the aid, benefit, service, or training.
  - 3. Not providing reasonable modification of policies and procedures that would allow accessibility of an aid, benefit, service, or training.
  - 4. Not providing an architecturally accessible location to deliver integrated program services.
- B. Disability is defined as a physical or mental impairment that substantially limits one or more major life activities, a record of such impairment, or being regarded as having such an impairment.
- C. Physical and mental impairment means:
  - 1. Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more body systems, such as: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, immune, hemic, lymphatic, skin, or endocrine; or
  - 2. Any mental or psychological disorder such as intellectual disability or organic brain syndrome, emotional or mental illness, and specific learning disabilities.
- D. Physical and mental impairment includes, but is not limited to: contagious and noncontagious diseases and conditions, such as the following: orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis,

cancer, heart disease, diabetes, intellectual disability, emotional illness, pregnancy-related medical conditions, dyslexia, and other specific learning disabilities, Attention Deficit Hyperactivity Disorder, Human Immunodeficiency Virus infection (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism.

E. Major life activities include, but are not limited to:

1. Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, writing, communication, interacting with others, and working; and
2. The operation of a "major bodily function", such as functions of the immune system, special sense organs, and skin, normal cell growth, and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive systems. The operation of a major bodily function includes the operation of an individual organ within the body system.

## **.02 Documentation of a Disability**

Disabilities must be self-identified by the applicant. If an individual indicates that they have a disability, the Americans with Disabilities Act (ADA) does not preclude agencies and providers, which administer programs that provide services to individuals with disabilities, from asking for documentation of a disability, if it is required for eligibility purposes and service provision. For the WIOA Title I-B Adult, Dislocated Worker and Youth Programs, a list of acceptable documentation of a disability is included in the WIOA Title I-B Eligibility Checklists listed within the Title I-B Policy and Procedure Manual under the *Exhibits - Policy and Procedures* tab: <https://des.az.gov/services/employment/workforce-innovation-and-opportunity-act-wioa/title-i-b-policy-and-procedure>.

Documentation of a disability must be kept in a separate, locked location and must not be kept in the participant's program file or uploaded to the State's system of record.

### **.03 Service Animals**

LWDB policies and practices must permit the use of service animals by individuals with disabilities, as described at 29 CFR § 38.16. LWDB and subrecipient staff must also ensure that any staff who interact with the public understand how to interact with members of the public who use service animals.

- A. Service animals are defined at 29 CFR § 38.4(ff).
- B. A service animal must be under the control of its handler. This means the 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 such would interfere with the service animal's safe, effective performance of work or tasks. When a harness, leash, or tether cannot be used for these reasons, the service animal must be under the handler's control using voice control, signals, or other effective means.
- C. Staff may ask an individual with a disability to remove a service animal from an ARIZONA@WORK Job Center when the animal is out of control and the animal's handler does not take effective action to control it, or when the animal is not housebroken.
- D. When staff properly exclude a service animal for one of the reasons listed above, the individual with a disability must be provided the opportunity to participate in WIOA Title I services without having the animal on the premises.
- E. Staff are not responsible for the care or supervision of a service animal.
- F. Recipients must not ask about the nature or extent of a person's disability, but may ask the following two questions to determine whether an animal qualifies as a service animal:
  - 1. Is the animal required because of a disability?
  - 2. What work or task has the animal been trained to perform?
- G. Recipients must not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal.

- H. Individuals with disabilities must be permitted to be accompanied by their service animals in all areas of an ARIZONA@WORK Job Center where all other participants would be allowed to go.

#### **.04 Programmatic and Physical Accessibility**

Recipients and subrecipients must ensure they are providing both physical and programmatic accessibility that allows individuals with a disability to participate in or benefit from the aid, benefit, service, or training.

##### A. Physical Accessibility

No qualified individual with a disability may be excluded from participation or be denied the benefits of a recipients' 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.

##### B. Programmatic Accessibility

All WIOA Title I program and activities must be programmatically accessible, including:

1. Providing reasonable accommodations to individuals with disabilities;
2. Making reasonable modifications to policies, practices, and procedures;
3. Administering programs in the most integrated setting appropriate;
4. Communicating with persons with disabilities as effectively as with others; and
5. Providing auxiliary aids or services, including assistive technology devices and services, when necessary, to afford individuals equal opportunity to participate in, and enjoy the benefits of, the program or activity.

## **708 LIMITED ENGLISH PROFICIENCY**

State and LWDB EO Officers must ensure that information provided regarding EO and nondiscrimination is culturally relevant and linguistically appropriate to the population being served.

- A. Services and information must be provided, in a language other than English for customers with LEP, in order to ensure programmatic accessibility.
- B. When an LWDB determines that a significant proportion of the population eligible to be served needs information in a language other than English the ARIZONA@WORK partners must translate written program materials into that language and provide effective interpretation services to members of the significant LEP group. This must be described in the local area policies and procedures.

## **709 DISCRIMINATION COMPLAINTS**

Any person who believes that either they or any specific class of individuals has been, or is being, subjected to discrimination prohibited by the nondiscrimination and EO provisions of WIOA, may file a written complaint either directly or through an authorized representative. The discrimination may be on the basis of color, religion, sex, national origin, age, disability, political affiliation, or belief and against beneficiaries on the basis of citizenship/immigrant status to work in the United States, participation in programs funded under WIOA Title I, or in connection with any WIOA Title I funded program or activity.

### **.01 Where to File a Discrimination Complaint**

The State of Arizona uses a three-level system that allows a complainant to file a discrimination complaint at the local level via the LWDB EO Officer; at the state-level via the State WIOA EO Officer; or at the federal level via the Director of the CRC.

#### A. Local Area Complaints

The complainant and/or their authorized representative may file a discrimination complaint with the LWDB EO Officer. Contact information for the LWDB EO Officer must be made readily available at all LWDA offices, as well as through the LWDB subrecipients and service providers.

B. State-Level Complaints

The complainant may file a discrimination complaint with the State WIOA EO Officer by contacting:

State-Level WIOA EO Officer  
Office of Equal Opportunity  
P.O. Box 6123 Mail Drop 51H3  
Phoenix, Arizona  
85005-6123  
Phone: (602) 364-3976  
Email: [OfficeofEqualOpportunity@azdes.gov](mailto:OfficeofEqualOpportunity@azdes.gov)

C. Federal Level Complaints

A complainant may file a discrimination complaint with the Director of the CRC by contacting:

Director  
Civil Rights Center (CRC)  
ATTN: Office of External Enforcement  
U.S. Department of Labor  
200 Constitution Avenue N.W.  
Room N-4123  
Washington, DC 20210  
  
Phone: (202) 693-6502  
Fax (15-page limit): (202) 693-6505, Attn: Office of External Enforcement  
TTY: (202) 693-6515  
Email: [CRCEXternalComplaints@dol.gov](mailto:CRCEXternalComplaints@dol.gov)

The U.S. Department of Labor *Complaint Information Form* is available in several languages at the following website:

<https://www.dol.gov/agencies/oasam/centers-offices/civil-rights-center/external/how-to-file-complaint#Complaint>

**.02 When to File a Discrimination Complaint**

A discrimination complaint must be filed at the federal, State, or local level within 180 days of an alleged occurrence of discrimination.

### **.03 How to File a Discrimination Complaint**

A discrimination complaint must be in writing, and must include:

- A. The complainant's name;
- B. The complainant's address, or other means of contacting the complainant;
- C. The identity of the respondent (respondent means the recipient, either an individual or entity the complainant alleges is responsible for the discrimination);
- D. A detailed description of the complainant's allegations that will allow the LWDB or State WIOA EO Officer, or the CRC Director, to decide whether:
  1. The LWDB WIOA Officer, State WIOA Officer, or CRC Director has jurisdiction over the complaint;
  2. The complaint was filed within the allotted time frame; and
  3. The complaint has apparent merit, i.e., the complainant's allegations, if true, would violate WIOA Section [188](#) or 29 CFR Part [§ 38](#).
- E. The electronic or handwritten signature of the complainant and/or the complainant's authorized representative.

### **.04 Right to Representation**

Both the complainant and the respondent have the right to be represented by an attorney and/or an authorized representative. Each person will bear their own costs of representation.

### **.05 Assistance Provided by LWDB EO Officer**

When the complainant chooses to file a discrimination complaint directly with the CRC Director, the LWDB EO Officer will assist the complainant and/or the complainant's authorized representative, if requested, by completing the necessary forms and information. The LWDB EO Officer will likewise provide the necessary forms, addresses, and/or other information needed to file a discrimination complaint to those individuals who do not request assistance.



## **710 DISCRIMINATION COMPLAINT PROCESSING**

LWDB and EO Officers must track complaints, which must be forwarded to the State WIOA EO Officer for review no later than the 15th calendar day of the month following the end of each quarter. The tracking report must contain the name and address of the complainant, the basis of the complaint, a description of the complaint, the date the complaint was filed, the disposition of the complaint, the date of the disposition, and any other pertinent information relating to the complaint. The Local EO Officer must inform the State EO Officer about complaint investigations and submit the Discrimination Complaint Log on a quarterly basis. Upon Request from the CRC, the State EO Officer will provide the tracking report to the CRC.

### **.01 Processing Procedures**

All recipients must comply with these EO complaint procedures. All complaints must be forwarded to the Local EO Officer for processing.

- A. The EO Officer will provide written acknowledgement of receipt of the complaint to the complainant within five calendar days.
- B. Upon receipt of the complaint or of information alleging discrimination, the EO Officer must determine if the following applies:
  1. The basis for the complaint is not covered by the prohibitions of 29 CFR § 38; or
  2. The complaint is against an agency, employer, organization, program, or individual within an entity that is not a WIOA Title I recipient, as defined in 29 CFR § 38.4(zz).
- C. If the EO Officer determines that the Local EO has jurisdiction over the complaint, the EO Officer will:
  1. Provide a written notice to all parties of the specific issues raised in the complaint;
  2. Provide a statement on each issue, either accepting the issue for investigation, or rejecting the issue, and the reasons for each rejection;
  3. Inform all parties of their right to representation by an attorney or other individual of their choice;

4. Inform all parties of their right to present evidence;
  5. Inform all parties of their right to dispute evidence presented by others;
  6. Inform all parties that the complainant has a right to request and receive, at no cost, auxiliary aids and services, and language assistance services. The notice will be translated into non-English language(s), as required in 29 CFR [§ 38.4\(h\)](#) and [\(i\)](#); and
  7. Provide a decision based strictly on the documented evidence.
- D. The EO Officer must contact the complainant and/or their authorized representative in writing within 14 calendar days of the complaint receipt, to determine the complainant's willingness to mediate using the Alternative Dispute Resolution (ADR) process described in [Section 709.02](#) of this policy, to ensure that the complainant is aware of the following:
1. The choice whether to use ADR or the customary process rests with the complainant and/or the complainant's authorized representative;
  2. If the parties do not reach an agreement under ADR, the complainant and/or their authorized representative may file a complaint with the CRC Director as described in 29 CFR 38.69 [through](#) 29 CFR 38.71;
  3. A party to any agreement reached under ADR may file a complaint within 30 days of the date on which the non-breaching party learns of an alleged breach; and
  4. The CRC Director will evaluate the circumstances to determine whether the agreement has been breached. If the CRC Director determines that the agreement has been breached, the complainant and/or their authorized representative may file a complaint with the CRC Director based upon the complainant's original allegation(s), and the CRC Director may waive the deadline for filing such a complaint.

- E. The EO Officer will provide a final written notice to the complainant within 90 calendar days of the date on which the complaint was filed. The written notice must contain the following information:
1. For each issue raised in the complaint, a statement of either:
    - a. The determination and an explanation of the underlying reasons for the decision; or
    - b. A description of how the parties ultimately resolved the issue.
  2. Note that the complainant and/or their authorized representative have a right to file a complaint with the CRC Director within 30 calendar days of the date in which the Notice of Final Action was issued if the complainant is dissatisfied with the final action on the complaint.
- F. Based on the information provided by the complainant and/or their authorized representative, the EO Officer may declare that there is no jurisdiction over the complaint, for one of the following reasons:
1. The basis for the complaint is not covered by the prohibitions of 29 CFR Part § 38.1; or
  2. The complaint is against an agency, employer, organization, program, or individual within an entity that is not a WIOA Title I recipient, as defined in 29 CFR § 38.4(zz).

A Notice of Lack of Jurisdiction (with one or more of the above reasons) will be provided to the complainant immediately upon the EO Officer's discovery of such lack. This written notice must also inform the complainant of their right to file a complaint with the CRC within 30 calendar days of receiving the notice.

## **.02 Alternative Dispute Resolution (ADR)/Mediation Process**

During the 90-day calendar period, complainants and/or the complainant's authorized representative may elect to participate in mediation. If the complainant selects mediation, it allows disputes to be resolved in a less adversarial manner. The Local EO Officer will coordinate with a pre-approved mediator. The individual conducting the mediation must be a neutral and impartial third party who will act as the facilitator. The mediator

must be a person who is acceptable to all parties including the EO Officer, and who will assist the parties in resolving their disputes.

- A. If the complainant chooses to participate in mediation, the complainant and/or their authorized representative must respond to the EO Officer in writing within 10 calendar days of the date of the request. The EO Officer must assist any complainant and/or their authorized representative with the written notice, upon request. The written notice must be dated and signed by the complainant and/or their authorized representative and must also include the relief sought.
- B. A written confirmation identifying the date, time, and location of the initial mediation conference must be sent to all appropriate parties.
- C. A consent form will be signed by all parties at the initial mediation conference, affirming that the contents of the mediation will be kept confidential.
- D. If resolution is reached under ADR/mediation, the agreement must be in writing. A copy of the signed agreement must be sent to the EO Officer.
- E. If an agreement is reached under ADR/mediation but a party to the agreement believes that their agreement has been breached, the non-breaching party may file a complaint with the CRC Director.
- F. If the parties do not reach resolution under ADR/mediation, the complainant and/or their authorized representative will be advised of the complainant's right to file a complaint with the CRC/USDOL. However, the EO Officer must continue the investigation. The mediation process must be completed within 45 calendar days of the receipt of the complaint. This will assist in keeping within the 90-calendar day timeframe of the written Notice of Final Action if the mediation process is not successful.

### **.03 Dissatisfaction with Notice of Final Action**

If, during the 90-calendar day period, the EO Officer issues a Notice of Final Action, but the complainant is dissatisfied with the decision on the complaint, the complainant and/or the complainant's authorized representative may file a complaint with the CRC Director within 30

calendar days after the date on which the complainant receives the Notice of Final Action.

#### **.04 Failure to Provide Notice of Final Action**

If by the end of the 90 calendar days from the date on which the complaint was filed, the EO Officer has failed to issue a Notice of Final Action, the complainant and/or the complainant's authorized representative may file a complaint with the CRC Director within 120 calendar days of the date in which the complaint was filed with the EO Officer.

#### **.05 Confidentiality**

The EO Officer is required to keep the following information confidential, to the maximum amount possible, consistent with applicable law and fair determination of the complaint:

- A. The fact that the complaint has been filed;
- B. The identity of the complainant(s);
- C. The identity of the individual respondents to the allegations;
- D. The identity of any person(s) who furnished information, relating to or assisting in the investigation of the complaint. Specifics of a complaint investigation or a compliance review will only be released to the extent necessary to investigate and fairly determine the issues raised in the complaint or as otherwise required by law.

#### **.06 Confidentiality of the Complaint**

All parties against whom the complaint is filed will receive a copy of the complaint during the course of the investigation or ADR, in order to allow the individual or entity the opportunity to respond to the allegations. The name of the complainant will only be released to the extent necessary to investigate and fairly determine the issues raised in the complaint.

#### **.07 Intimidation and Retaliation Prohibition**

- A. It is prohibited to discharge, intimidate, retaliate, threaten, coerce, or discriminate against a person who has:

1. Filed a complaint alleging violation of WIOA Section [188](#) or 29 CFR [§ 38](#);
  2. Opposed a practice prohibited by the nondiscrimination and EO provisions of WIOA Section [188](#) and 29 CFR [§ 38](#);
  3. Furnished information to, assisted, or participated in any manner in an investigation, review, hearing, or any other activity related to any of the following:
    - a. Administration of the nondiscrimination and EO provisions of WIOA Section [188](#) and 29 CFR [§ 38](#).
    - b. Exercise of authority of the provisions in WIOA Section [188](#) and 29 CFR [§ 38](#).
    - c. Exercise of privilege secured by WIOA Section [188](#) and 29 CFR [§ 38](#).
  4. Otherwise exercise any rights and privileges under WIOA Section [188](#) and 29 CFR [§ 38](#).
- B. The sanctions and penalties in Section [188](#) of WIOA and 29 CFR [§ 38](#) may be imposed against any recipient who engages in such retaliation or intimidation, or who fails to take appropriate steps to prevent such activity.

## **711 CORRECTIVE ACTIONS AND SANCTIONS**

If it is determined Corrective Action or Sanctions are warranted when instances of noncompliance with WIOA Section [188](#) or 29 CFR [§ 38](#) and this policy are found, DES will follow the Substantial Violation, Sanctions, Decertification and Reorganization Policy, located within the Title I-B Policy and Procedure Manual, Chapter 2, Section 1300 (<https://des.az.gov/services/employment/workforce-innovation-and-opportunity-act-wioa/title-i-b-policy-and-procedure>), as indicated below:

### **.01 Technical and Discrimination Violations**

Corrective and remedial action must be sought when any deficiency is identified as a result of a monitoring review or an EO complaint. Deficiencies may include both technical violations and/or discrimination violations.

- A. Technical violations include deficiencies that do not include discrimination, and require written assurances from the State, Unemployment Insurance Administration, LWDBs, and ARIZONA@WORK partners. Technical violations may include, but are not limited to, failure to:
  - 1. Post the required “EO is the Law” notice;
  - 2. Include an “EO is the Law” notice/poster in the WIOA Title I participant’s program file and/or electronic file; and
  - 3. Include a statement signed by the participant that acknowledges the Complaint and Grievance Procedures in the participant’s program file or electronic file.
  
- B. Discrimination violations include, but are not limited to:
  - 1. Disparate treatment (disparate treatment means intentionally treating members of protected groups differently based on their protected status);
  - 2. Disparate impact (disparate impact means the use of policies or practices that are neutral which may be neutral or may appear to be neutral, but have a disproportionate impact on members of protected groups, and/or are not job related and are not consistent with business necessity); and
  - 3. Failure to provide reasonable accommodations.
  
- C. Discrimination violations may require a conciliation agreement or assurance statement, provisions of which must include: making whole relief to include where appropriate; retroactive relief (e.g., back pay, front pay, retroactive benefits, training, any service discriminatorily denied, etc.) or prospective relief (e.g., change of policy, training, development of new policy, or training on policy communication).

## **.02 Corrective Action Process**

After the State EO Monitoring review, the State EO Officer must complete the EO Monitoring Review Guide Report and must include all discrepancies found during the EO Monitoring Review and the required corrective actions the recipient must take to come into compliance. The State EO Officer must provide the report to the recipient.

- A. For each corrective action identified in the EO Monitoring Review Guide Report, the recipient must:
1. Submit their corrective action plan within 20 business days of receipt of the EO Monitoring Review Guide Report;
  2. Implement corrections to discrepancies in the EO Monitoring Review Report that must be designed to completely correct the violation and bring the recipient into compliance;
  3. Submit a written assurance that all of the discrepancies have been corrected and will not recur. The assurance must list the deficiency and the corrective action as specified in the written notification, describe the actions taken and the dates of those actions, state that the recipient or subrecipient is taking steps and will continue to take steps to ensure that the deficiency does not recur, and certify that the assurance is signed by the highest-level official of the recipient or subrecipient; and
  4. If the discrepancies involve discrimination, a conciliation agreement is required. Remedial actions are designed to make an individual or individuals who have suffered injury or loss because of discrimination whole. A person or persons who are wronged must be restored to the status they would have expected if the discrimination had not occurred. In a finding of discrimination, the procedures must provide, where appropriate, for retroactive relief (including but not limited to, back pay) and prospective relief (including, but not limited to, training, policy development, and communication) to ensure the discrimination does not recur.
- B. When a recipient or subrecipient is placed on a corrective or remedial action plan, the EO Officer overseeing the action plan must conduct a desk review and/or onsite visit, as appropriate, to ensure that the commitments to correct deficiencies described in the plan are satisfied and violations will not recur.
- C. The EO Officer will examine any instances of noncompliance during a follow-up onsite visit or as part of the next scheduled monitoring review of the recipient or subrecipient. Recipients and subrecipients who have a corrective or remedial action plan are required to provide follow-up reports for completing all corrective or remedial



actions, which must be prepared and forwarded to the EO Officer overseeing the action plan, as directed.

- D. When the EO Officer has determined that the commitments in the corrective or remedial action plan are satisfied, the EO Officer will close the monitoring review.

### **.03 Sanction Procedures**

Sanctions penalize or censure a recipient when a recipient has failed to resolve violations and comply with the EO and nondiscrimination requirements of WIOA Section [188](#) of 29 CFR [§ 38](#).

- A. The State EO Officer must issue a final determination in writing, and take such actions as allowable by law, to initiate the sanction process.

The final determination must include:

1. A statement of the efforts made to achieve voluntary compliance and a statement that those efforts have been unsuccessful;
2. A statement of those matters upon which the recipient and the EO officer continue to disagree;
3. A list of any modifications to the finding of fact or conclusions that were set forth in the initial determination;
4. A statement of the recipient's liability and, if appropriate, the extent of that liability;
5. A description of the corrective or remedial actions that the recipient must take to come into compliance; and
6. A notice that failure to come into compliance within 10 calendar days may result in the following consequences:
  - a. WIOA Title I funds may be withheld in whole or in part;
  - b. Applications for set-aside funds may be denied when the recipient is determined to be non-compliant with EO requirements in WIOA Section [188](#) and 29 CFR [§ 38](#);

- c. DES may refer the case to the Arizona State Attorney General or the U.S. Department of Justice with a request to file suit against the recipient;
  - d. DES may follow the process outlined in the Substantial Violations, Sanctions, Decertification, and Reorganization Policy, located within Section 1304 of the Title I-B Policy and Procedure Manual (<https://des.az.gov/services/employment/workforce-innovation-and-opportunity-act-wioa/title-i-b-policy-and-procedure>); or
  - e. DES may take any other appropriate action against the recipient allowable by law.
- B. A recipient has the right to file a complaint with the Director of the CRC, when the recipient is dissatisfied with the decision in the Notice of Final Action, within 30 calendar days of the date on which the complainant received the Notice of Final Action at:

Director  
Civil Rights Center  
U.S. Department of Labor  
200 Constitution Ave, Northwest, Room N-4123  
Washington, D.C. 20210