

WORKFORCE POLICY BULLETIN

DATE: May 10, 2018

TO: Service Providers

FROM: Donna Van Wert, Executive Director
Workforce Development Board



SUBJECT: Non Discrimination Equal Opportunity Complaint Procedures

Background:

This policy bulletin updates the equal opportunity and complaint procedures for the Contra Costa local Workforce Development Area and incorporates updated state guidance from Employment Development Department (EDD) Directive WSD 17-01 Non Discrimination and Equal Opportunity Procedures. Required notices and participant documents have also been updated.

The nondiscrimination and equal opportunity provisions found in Section 188 of WIOA and Title 29 CFR Part 38 prohibit discrimination on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries, applicants, and WIOA participants only, citizenship or participation in a WIOA Title I financially assisted program or activity.

No benefits may be denied to a WIOA participant because of race, creed, color, religion, sex (including sexual harassment, sexual orientation, sex stereotyping, transgender status, gender identity, pregnancy, childbirth, and related medical conditions) national origin (including limited English proficiency), age, disability, political affiliation or belief, retaliation, citizenship or participation in a WIOA program or activity, while being registered, interviewed, counseled, assessed, or while working in a work activity or attending class as part of the program; and

1. Each WIOA participant must be provided the same opportunities to use all facilities available in the program as all other participants; and
2. Reasonable steps must be taken to ensure that communications with individuals with disabilities are as effective as communications with others. Meaning that, upon request and at no cost to an individual, Contra Costa AJCCs are required to provide appropriate auxiliary

aids and services to qualified individuals with disabilities. (See Reasonable Accommodations Procedures)

Discrimination and Equal Opportunity complaints alleging discrimination on the basis of race; creed, color; religion; sex (including sexual harassment, sexual orientation, sex stereotyping, transgender status, gender identity, pregnancy, childbirth, and related medical conditions); national origin (including limited English proficiency); age; disability, political affiliation or belief, retaliation; or, for beneficiaries, applicants, and participants only, on the basis of citizenship status or participation in a WIOA Title I financially assisted program or activity shall be processed using the following procedures:

Any person who believes that he or she or any specific class of individuals has been or is being subjected to discrimination prohibited by the nondiscrimination and equal opportunity provisions of the WIOA may file a written complaint by using the *WDBCCC Discrimination Complaint Form (Attachment 1)*. **This form shall be made available at each WIOA AJCC service delivery location.**

A representative may also file a complaint on behalf of a person who believes that they have been subjected to discrimination. Note that both Complainant and the Respondent have the right to be represented by an attorney or other individual of their choice.

Statute of Limitations: A discrimination complaint must be filed within 180 days of the alleged discrimination with either the WDBCCC EO Officer, the EHSD EO Officer, the County grant sub-recipient or directly with the Department of Labor Civil Rights Center (CRC).

Required Information: All complaints must be submitted in writing and must be signed, dated, and contain the following:

- A. Complainant's name, address and means of contact;
- B. Respondent's information;
- C. Complainant's allegation(s) described in sufficient detail to allow the CRC or County EOO staff, as applicable, to determine whether: (1) County or CRC has jurisdiction over the complaint; (2) the complaint was filed timely (i.e. within 180 days of the occurrence); and (3) the complaint has apparent merit (i.e. whether the allegation(s), if true, would violate any of the nondiscrimination and equal opportunity provisions of the WIOA); and
- D. Signature of the complainant or their authorized representative.

Discrimination Complaints Procedure for Filing with the County EHSD or WDBCCC:

Complaints filed with the WDBCCC should be mailed to:

**Workforce Development Board of Contra Costa
4071 Port Chicago Highway, Suite 250
Concord, CA 94520
Attn: Equal Opportunity Officer**

The complainant will be offered Alternative Dispute Resolution (ADR) upon receipt of the complaint, as further described below. WDBCCC will investigate and prepare a written report that will be sent to the Complainant and the Respondent to attempt to resolve the complaint informally within thirty (30) days of filing of the complaint.

The WDBCCC will also provide copies to the State Equal Employment Opportunity Office (EEOO).

Alternative Dispute Resolution (ADR). The choice to use Alternative Dispute Resolution (ADR) procedures rests with the Complainant. The preferred form of ADR is mediation.

A party to the agreement reached under ADR may file a complaint with CRC in the event the agreement is breached. In such circumstances, the following rules apply:

- (1) The non-breaching party may file a complaint with CRC within 30 days of the date on which the non-breaching party learns of the alleged breach;
- (2) The CRC will evaluate the circumstances to determine whether the agreement has been breached. If the CRC determines that the agreement has been breached, the Complainant may file a complaint with the CRC based upon their original allegation(s), and the CRC will waive the deadline for filing such a complaint.

If the parties do not reach an agreement under ADR, the Complainant may request an administrative hearing or file directly with CRC pursuant to Title 29 CFR Sections 38.69 to 38.72.

Administrative Hearing. The request for administrative hearing shall be made within (5) days of the informal resolution meeting.

The administrative hearing shall be scheduled before the County EHSD EEO or WDBCCC EEO within 30 days of filing the request for hearing. A Notice of Final Action shall be issued by the County EHSD or WDBCCC within 90 days of filing the complaint. The Notice of Final Action shall include notification of the right to file a complaint with the Department of Labor Civil Rights Center (CRC).

If the Complainant wishes to file a complaint with CRC, he/she must wait until the County issues a decision or until 90 days have passed since the filing of the original complaint.

If after the 90 days noted above, the Complainant continues to be dissatisfied with the resolution of the complaint, the Complainant or their representative may file directly with the CRC within 30 days of the date that the Complainant received the Notice of Final Action from the County.

In the event that the Complainant has not received the Notice of Final Action within 90 days of filing, the Complainant may file the complaint with the CRC. Specifically, the complaint must be filed with the CRC within 120 days of the date of which the complaint was filed with the County.

The County shall notify the Complainant in writing immediately upon determining that it does not have jurisdiction over the complaint that alleges a violation of the nondiscrimination and equal opportunity provisions of WIOA. The Notice of Lack of Jurisdiction shall include the basis for such determination, as well as, a statement of the Complainant's right to file a written complaint with CRC within thirty (30) days of receipt of the Notice.

Discrimination Complaints - Procedure for Filing with the Civil Rights Center (CRC)

A complaint filed with the CRC must be done **within 180 days** of the alleged discrimination. The CRC, for good cause shown, may extend the filing time. In order to receive an extension, the Complainant must be notified by WDACS that a waiver letter is to be filed with CRC. The waiver letter should include the reason the 180-day time period elapsed. The time period for filing is for the administrative convenience of the CRC and does not create a defense for the Respondent.

Complaints filed with the Civil Rights Center (CRC) should be mailed to:

**Civil Rights Center (CRC)
U.S. Department of Labor
200 Constitution Avenue N.W., Room N-4123
Washington, D.C. 20210**

Actions by the Civil Rights Center. When the CRC accepts a complaint for investigation, it shall do the following: (a) notify the Local Area and the complainant of the acceptance of the complaint for investigation and (b) advise the Local Area and complainant on the issues over which the CRC has accepted jurisdiction. When a complaint filed contains insufficient information, CRC will seek the needed information from the Complainant. If the Complainant is unavailable after reasonable efforts have been made to reach them, or the information is not provided within the time specified, the complaint file may be closed without prejudice upon written notice sent to the Complainant's last known address.

The CRC may issue a subpoena to the Complainant to appear and give testimony and/or produce documentary evidence, before a designated representative, relating to the complaint under investigation. This procedure can be done at any place and time in the United States.

Where the CRC lacks jurisdiction over the complaint, CRC shall notify the Complainant and give the reason(s) for this determination and refer the complainant to the appropriate federal, state or local authority, when possible.

If the Complainant alleges more than one kind of complaint, "joint complaint" (e.g. individual employment discrimination, age discrimination, equal pay discrimination, etc.), CRC shall refer such joint complaint to the Equal Employment Opportunity Commission for investigation and conciliation pursuant to Title 29 CFR Parts 1690 or 1691, as appropriate.

The CRC may offer the parties of a complaint the option of mediating the complaint. In such circumstances, the following rules apply: (a) the mediation is voluntary; both parties must consent before the mediation process will proceed, (b) the mediation will be conducted under the guidance issued by the CRC and (c) If the parties are unable to reach resolution of the complaint through the mediation, the CRC will investigate and process the complaint under Title 29 CFR Sections 38.82 through 38.88.

Initial Determination by Civil Rights Center. After making a cause of finding, CRC shall issue an Initial Determination. The Initial Determination will inform the Complainant and the County in writing of the following:

- (a) The specific findings of the investigation;
- (b) The proposed corrective or remedial action and the time by which the corrective or remedial action must be completed;
- (c) Whether it will be necessary for the Local Area to enter into a written agreement; and;
- (d) The opportunity to participate in voluntary compliance negotiations.

Final Determination by Civil Rights Center. Where a no cause determination is made, the CRC must issue a Final Determination to the complainant and the Local Area. The Final Determination represents DOL's final agency action on the complaint.

Allegations of Discrimination by AJCC Partners. Under the AJCC delivery system where an allegation of discrimination is made against an entity that operates a program or activity financially assisted by a federal grant-making agency other than DOL, but participates as a partner in the AJCC delivery system, the following procedures apply:

- a. If the Complainant alleges discrimination on a basis that is prohibited both by Section 188 of WIOA and by a civil rights law enforced by the federal grant-making agency, the CRC and the grant-making agency have dual jurisdiction over the complaint. The CRC will refer the complaint to the grant-making agency for processing and the grantmaking agency's regulations will govern the processing of the complaint.
- b. If the complaint alleges discrimination on a basis that is prohibited by Section 188 of WIOA, but not by any civil rights laws enforced by the federal grant-making agency, the CRC has sole

jurisdiction over the complaint and will retain and process the complaint per Title 29 Part 38. The CRC will advise the complainant and the Local Area of the referral.

Prohibition against Using Federal Funds for Monetary Compensation. Monetary corrective action may not be paid from federal funds.

WIOA Program Violation Grievances and Complaints Filing & Resolution

This section deals with complaints alleging violations of WIOA regulations, including complaints alleging fraud or criminal activity. These policies and procedures are established pursuant to EDD Directive WSD 8-04 Grievance and Complaint Procedures.

Legal Representation. At all levels of the grievance or complaint process, complainants have the right to be represented, at their own expense, by a person(s) of their choosing. Any party may be represented by an attorney or other representative at their own expense. The County cannot appoint an attorney to represent either party nor can the County provide legal advice to either party.

Statute of Limitations. Grievances or complaints must be filed with the County within one year of the alleged violation. All grievances, complaints, amendments, and withdrawals must be in writing. All persons filing grievances or complaints shall be free from restraint, coercion, reprisal, or discrimination. A complaint shall be accepted only if the Complainant alleges a violation of the regulations, grant or other agreements under WIOA.

Complainants have the right to receive technical assistance to ensure that the complaints are filed properly. Such technical assistance includes providing instructions on how to file a grievance or complaint, providing relevant copies of documents, clarifications and interpretations of relevant provisions.

Information to be Included in Complaint. The grievance or complaint must be in writing, signed, and dated. For resolution purposes, the County recommends that the following information is obtained for all complaints:

- Full name, telephone number, and mailing address of the complainant;
- Full name, telephone number, and mailing address of the respondent;
- A clear and concise statement of the facts and dates describing the alleged violation;
- The provisions of the WIOA regulations, grant, or other agreements under the WIOA, believed to have been violated;
- Grievances or complaints against individuals, including staff or participants, shall indicate how those individuals did not comply with the WIOA law, regulation, or contract; and
- The remedy sought by the complainant.

The absence of any of the requested information shall not be a basis for dismissing the grievance or complaint. A grievance or complaint may be amended to correct technical deficiencies at any time up to the time of the hearing. Grievances or complaints may not be amended to add new issues. The one-year time period in which a grievance or complaint may be filed is not extended for grievances or complaints that are refiled with amendments. Grievances or complaints may be withdrawn at any time prior to the issuance of the hearing officer's decision. The County shall send a copy of the grievance or complaint to the respondent.

Modification of Complaint. All time frames referred to in these procedures may be modified upon mutual written consent of the parties involved or by changes in applicable State or Federal rules and regulations.

Prior to the hearing, the complainant may amend his or her complaint to correct technical deficiencies but is not to add issues. The amendment must be submitted in writing to the Equal Opportunity Officer.

Withdrawal of Complaint. A complaint once filed may be withdrawn only by written notice to the WIOA Grievance Officer and to re-file the same complaint at a later date will require the consent of the WDBCCC Director or her designee. If the complainant fails to cooperate or is unavailable, the complaint may be dismissed upon reasonable notice to the last known address of the complainant. Any requests made to withdraw a complaint must be made in writing and received prior to the scheduled administrative hearing.

Person and Place of Contact. Formal complaints may be filed with:

Workforce Development Board of Contra Costa
4071 Port Chicago Hwy, Ste 250
Concord, CA 94520
Attn: WIOA Grievance Officer

Informal Resolution. After the complaint is accepted, the Hearing Officer will contact the Complainant and Respondent in an attempt to resolve the complaint informally. Attempts at informal resolution will commence within ten (10) working days of the date the complaint is filed.

Administrative Hearing Procedure. If an informal resolution cannot be reached, an administrative hearing will be scheduled before a Hearing Officer. Such a hearing will be scheduled within 30 days of filing the complaint.

The hearing will be conducted by a fair and impartial Hearing Officer. The hearing will be conducted in an informal manner and will be recorded.

Prior Hearing Notice. A written notice will be mailed by certified mail-return receipt requested, to the Complainant and the Respondent, to be received by both parties not later than ten (10) days prior to the hearing.

The notice will contain the date of issuance; names of the parties involved, date, time, and place of the hearing; a statement of the alleged violations; the manner in which it will be conducted, the issues to be decided, the rights of the parties involved, the name, address, and telephone number of the contact person issuing the notice.

Other Interested Parties. Other Interested Parties may be given notice. The notice will outline the Other Interested Party's participation in the hearing.

Witnesses and Evidence. Any party may bring witnesses and documentary evidence.

- (a) Either party may have records or documents relevant to the issues produced by their custodian when such records or documents are kept by either party in the ordinary course of business.
- (b) The Complainant may request that employees and /or participants of the Respondent who have knowledge of the pertinent facts be available to testify at the hearing.
- (c) Requests for records, documents and/or persons serving as witnesses must be in writing and submitted to the Hearing Officer at least 10 working days prior to the date of the hearing.
- (d) The request must specify which records, documents, and individuals are being sought and a concise statement of why such information and individuals are presumed to be relevant to the issue(s).
- (e) The Hearing Officer will have the discretion to determine issues of relevancy at the time of the hearing.
- (f) Failure on the part of either party to supply information and/or make persons available that have been requested may result in sanctions being imposed by the Hearing Officer and/or County.
- (g) Any party may question any witness or party, in accordance with due process and the Hearing Officer's discretion.

Notice of Hearing Officer's Findings. Not later than 60 days after the filing of the grievance or complaint, all parties involved will be notified in writing of the recommendation(s) of the Hearing Officer, unless extended with the written consent of both parties.

The written notification will be mailed first class to all parties and will include:

- (1) The names of the parties involved;
- (2) A statement of the alleged violations and related issues;
- (3) A statement of the facts;
- (4) The decision on the issue and the reasons for the decision;
- (5) A statement of the remedies to be applied and/or the corrective measure required, if any;
- (6) A statement that the procedures delineated have been completed; and
- (7) Notice of any party's right to request a review of the County's final determination by the State Review Panel within 10 days of the receipt of the decision.

Request for State Panel Review. Requests for review by the State Review Panel must be sent to:

**Chief, Compliance Review Division, MIC 22-M
Employment Development Department
P.O. Box 826880
Sacramento, CA 94280-0001**

All requests for review must include the following information:

- (a) The full name, mailing address and telephone number of the party.
- (b) The name, address and telephone number of the other party.
- (c) A copy of the written decision rendered by the County of Los Angeles.
- (d) A brief statement of why the request for review is being made and/or the section of the County's decision to be reviewed. If known, the statement should also include the provision(s) under WIOA, the regulations or sub-grant agreement believed to have been violated.
- (e) A statement of the relief or remedy being sought.

Federal-Level Appeal Process. Under Title 20 CFR 683.610(a)(1), if the State has not issued a decision within the required 60-day time limit, the Complainant can file an appeal to the Secretary of Labor. The appeal must be filed with the Secretary of Labor no later than 120 days of the filing of the grievance or complaint with the State, or the filing of the appeal of a local grievance or complaint with the State.

In cases where a decision has been reached and the State issued an adverse decision, the Complainant can file an appeal to the Secretary of Labor within 60 days of the receipt of the decision being appealed.

The request for appeal must be submitted by certified mail, return receipt to:

**Attention: ASET Secretary
U. S. Department of Labor
200 Constitution Avenue, NW
Washington, D.C. 20210**

A copy of the appeal must be simultaneously provided to the opposing party and the DOL Employment and Training Administration (ETA) Regional Administrator-Region 6 at:

**U.S. Department of Labor
Office of Regional Administrator
P.O. Box 193767
San Francisco, CA 94119-3767**

Intimidation and Retaliation are Prohibited

No recipient may discharge, intimidate, retaliate, threaten, coerce, or discriminate against any individual because the individual has filed a complaint alleging any of the following:

- A violation of the WIOA.
- Opposed a practice prohibited by the nondiscrimination and equal opportunity provisions of the WIOA.

Allegations of Fraud, Waste, Abuse or other Criminal Activity

Information and complaints involving criminal fraud, waste, abuse, or other criminal activity must be reported immediately to the following department:

**U.S. Department of Labor
Office of Inspector General
200 Constitution Avenue, NW, Room S-5506
Washington, D.C. 20210**

Citations & References:

Workforce Innovation and Opportunity Act (WIOA) (Public Law 113-128) Sections 188 and 183
Title 20 CFR Part 683
Title 29 CFR Part 34 and Part 38
EDD Directive WSD 17-01 Non Discrimination and Equal Opportunity Procedures

If you have any questions regarding this Workforce Policy Bulletin, please contact Jeff Shoji, WDBCCC EO Officer at 925-602-6811.

Attachment: Discrimination Complaint Form

cc: Kathy Gallagher, Director, EHSD
Mike Roetzer, EHSD Director of Administration
Maureen Nelson, One Stop Administrator, One-Stop Operations
Gina Del Carlo, Workforce Services Specialist, Workforce Development Board
Jeff Shoji, Business Systems Analyst, Workforce Development Board
Noramah Burch, Workforce Services Specialist, Workforce Development Board
Alejandra Chamberlain, Youth Development Manager, Contra Costa County Office of Education
Ruth Barajas, Director, Bay Area Community Resources
Maryam Adalat, Mt. Diablo Unified District
Merl Craft, Future Build Program Manager

***As a WIOA Title I financially-assisted program, the WDBCCC is an equal opportunity employer/program.
Auxiliary aids and services are available upon request to individuals with disabilities.***