



**STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

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(SN 152)

WIA BULLETIN NO. 05-03, Change 2

TO: WIA Partners

SUBJECT: Revised Grievance and Complaint Procedures

PURPOSE

This bulletin replaces Attachment 1 in WIA Bulletin 05-03, Change 1, issued on December 20, 2012.

BACKGROUND

Title 20 CFR Section 667.600 requires each local area, the State, and direct recipient of funds under Title I of WIA to establish and maintain a procedure for grievances and complaints from participants and other interested parties affected by the local workforce investment system, including One-Stop partners, service providers, and the statewide workforce investment programs.

WIA Bulletin No. 05-03, Change 1, provided updated policy and procedures for complaints alleging discrimination (Attachment 1 of the Bulletin) and non-discriminatory complaints relating to programmatic grievances (Attachment 2).

The policy and procedures for complaints about discrimination (Attachment 1) have been revised in this Bulletin No. 05-03, Change 2, to more clearly distinguish between –

1. Complaints about discrimination prohibited against *anyone*, as established in *federal* statutes; and
2. Complaints about *employment discrimination only*, as established in *federal and State* statutes.

WIA requires that the State establish policy and procedures for discrimination complaints as required in federal statutes to cover applicants, participants, and other parties, item 1 above. This Bulletin establishes the updated policy and procedures for those types of complaints.

For complaints about *employment* discrimination only, as provided in federal and State statutes, different agencies have established policy and procedures for their respective areas. Information about where to file those types of complaints is provided in this Bulletin for convenience of staff and customers.

POLICY

Counties are responsible to ensure they and their service and training providers, On-the-Job Training employers, and other subrecipients comply with these updated procedures.

There has been no change to Attachment 2 of the WIA Bulletin No. 05-03, Change 1.

PROCEDURES

Replace Attachment 1 from WIA Bulletin No. 05-03, Change 1, with the revised Attachment 1.

EFFECTIVE DATE

This Bulletin is effective immediately.

INQUIRIES

Questions regarding this bulletin should be directed to Ms. Linda Sakamoto, Training and Development Program Specialist, at (808) 586-9059.



DWIGHT TAKAMINE

Attachment

STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
EQUAL OPPORTUNITY COMPLAINT PROCEDURES

PURPOSE: Discrimination on the basis of race, color, religion, sex/gender, national origin, age, political affiliation or belief, beneficiaries on the basis of citizenship, or disability is prohibited under federal statutes. In addition, discrimination on the basis of political affiliation or belief, arrest and court record, sexual orientation, ancestry, marital status, status as domestic violence victim, national guard status, child-support garnishment or breast-feeding are prohibited under state statute. These procedures provide any person who believes that they have been subjected to unlawful discrimination by the Department of Labor and Industrial Relations (DLIR) or recipients of federal or state funds from DLIR a means to seek redress.

OBJECTIVE: The objective of these procedures is to provide employees, applicants, and applicants for employment a means of redress to further the State of Hawaii and DLIR's efforts to eliminate discrimination and reaffirm its commitment to equal opportunity (EO), provide a system of feedback to correct possible problem areas in both work-related and service situations, and provide a complaint system which is readily accessible and simple to use.

ASSURANCES: Complainants and all participants in the investigation process are assured freedom from restraint, interference, coercion, or reprisal. The identity of complainants and witnesses shall be kept confidential except to the extent necessary to ensure a fair determination of the issues.

DEFINITIONS:

ADR: Alternative Dispute Resolution.

Alien: A foreign born resident who has not been naturalized and is authorized to work in the United States of America.

Applicant: An individual who is interested in being considered for financially assisted aid, benefits, services, or training by a recipient, and who has signified that interest by submitting personal information in response to a request by the recipient.

Applicant for employment: A person or persons who make(s) application for employment with DLIR or a recipient of federal or state funds received through DLIR.

Complainant: An individual who files a written complaint alleging discrimination. Where more than one individual files the complaint, the term shall refer to all of them.

CRC: The U.S. Department of Labor, Civil Rights Center.

Department: The State of Hawaii, Department of Labor and Industrial Relations (herein after referred to as DLIR).

Director: The Director of the Department of Labor and Industrial Relations, State of Hawaii.

Discrimination: Unlawful acts or practices that treat an individual less favorably than other similarly situated individuals because of their race, color, religion, sex, sexual orientation, ancestry, national origin, age, disability, political affiliation, arrest and court records, marital status, status as domestic violence victim, national guard status, child-support garnishment or breast-feeding.

Employee: Present or former employee of DLIR or recipient.

Equal Opportunity (EO) Complaint: An oral or written allegation of discrimination in employment practices or services provided including but not limited to recruitment, testing, interviewing, selection, transfer, promotion, demotion, training opportunities, work assignments, career counseling, leave, retention, or termination or discharge.

Equal Opportunity (EO) Officer: The Equal Opportunity Officer of the State of Hawaii Department of Labor and Industrial Relations who also serves as the U.S. Department of Labor, Civil Rights Center, Liaison with the State of Hawaii.

Executive: The person who is in ultimate charge of the recipient agency (e.g.; Governor, Mayor, Director, President, etc.)

Intending Citizens: Permanent residents, temporary residents, refugees, and asylees who intend to become citizens.

Participant: Means any individual who has been determined to be eligible to participate in, and who is receiving aid, benefits, services, or training under a program or activity funded in whole or in part under Title I of WIA, the Senior Community Services Employment Program or other federal or state-funded programs administered by DLIR.

Recipient: Means any entity to which financial assistance is extended, either directly from DLIR, U.S. Department of Labor or through the Governor or another recipient (including any successor, assignee, or transferee of a recipient) but excluding the ultimate beneficiaries of the WIA Title I-funded program or activity.

SCSEP: Means the Senior Community Services Employment Program. Older Americans Act, as amended, Public Law 102-375.

WIA: Means the Workforce Investment Act of 1998, Public Law 105-220.

GENERAL PROVISIONS

1. The complainant has the burden of establishing the validity and merits of their complaints.
2. A complainant may discontinue the complaint by submitting a "Withdrawal of EO Complaint and Release".
3. A complainant may discontinue the complaint by submitting a "Withdrawal of EO Complaint and Release".

COMPLAINT PROCEDURES

These procedures are divided into whether they are complaints about discrimination prohibited by –

- ✓ Federal statute prohibiting discrimination against anyone (including applicants for benefits and services, recipients, On-the-Job Training employers, participants, and other beneficiaries); or
- ✓ Federal and/or State statutes against **employment** discrimination only.

Section A covers complaints about discrimination prohibited by federal statute against anyone, including applicants for benefits and services, recipients, On-the-Job Training employers, participants, and other beneficiaries. Section B covers complaints about discrimination prohibited against employment discrimination only.

A. Complaints Covered by Federal Statute Prohibiting Discrimination Against Anyone (Including Applicants, Recipients, Participants, On-the-Job Training Employers, and Other Beneficiaries).

1. It is **against the law** for recipients of Federal financial assistance, including the State of Hawaii Department of Labor and Industrial Relations (DLIR) and the counties, **to discriminate** on the following basis:
 - ❖ Against any individual in the United States on the basis of:
 - **Race**
 - **Color**
 - **Religion**
 - **Sex**

- **National OriginAge**
 - **Disability**
 - **Political affiliation or belief, and**
- ❖ Against any beneficiary of programs financially assisted by the U.S. Department of Labor on the basis of the beneficiary's **citizenship/status as a lawfully admitted immigrant authorized to work** in the United States, or his or her participation in any Workforce Investment Act (WIA) Title I financially assisted program or activity.
2. The recipient of federal financial assistance **must not discriminate** in any of the following areas:
- **Decide who will be admitted, or have access, to any federally assisted program or activity;**
 - **Provide opportunities in or treating any person with regard to such a program or activity, or**
 - **Make employment decisions in the administration of, or in connection with, such program or activity.**
3. Who May File
- Any person who believes that either they, or any specific class of individuals, has been or is being subjected to discrimination prohibited by federal statute may file a written complaint, either by themselves or through a representative.
4. What to Do if You Believe You Have Experienced Discrimination
- If you are a WIA applicant, participant, program staff, or other parties affected by the local Workforce Investment system, and think that you have been subjected to discrimination under a U.S. Department of Labor (USDOL) federal financially assisted program or activity, you may file your complaint within 180 days from the date of the alleged violation.

5. Where to File

Jade Butay
State of Hawaii DLIR
830 Punchbowl St., Room 321
Honolulu, Hawaii 96813
Phone: (808) 586-8844
Fax: (808) 586-9099
TTY/TDD (808) 586-8847

OR The Director
Civil Rights Center
U.S. Department of Labor
200 Constitution Avenue, N.W.
Room N-4123
Washington, D.C. 20210

6. If you file your complaint with the State of Hawaii Department of Labor and Industrial Relations (DLIR), you must wait either until DLIR issues a written Notice of Final Action, or until 90 days have passed (whichever is sooner), before filing with the USDOL Civil Rights Center (CRC).
7. If the DLIR does not give you a written Notice of Final Action within 90 days of the day on which you filed a complaint, you do not have to wait for DLIR to issue that Notice before filing a complaint with CRC. However, you must file your CRC complaint within 30 days of the 90- day deadline (in other words, 120 days after the day on which you filed your complaint with the DLIR).
8. If the DLIR does give you a written Notice of Final Action on your complaint, but you are dissatisfied with the decision or resolution, you may file a complaint with CRC. You must file your CRC complaint within 30 days of the date on which you received the Notice of Final Action.
9. In addition to the above, WIA O`ahu WorkLinks, Big Island WorkPlace Connection, WorkSourceMaui and WorkWise Kauai applicants, participants, program staff, and other parties affected by the respective Workforce Investment system in the following counties may file with the persons listed below:

City and County of Honolulu
Equal Opportunity Officer
650 South King Street, 10th Floor
Honolulu, HI 96813
Phone :(808) 768-8505 (Voice)

County of Hawaii
Teri Spinola-Campbell
Equal Opportunity Officer/ADA Coordinator
Department of Civil Services
101 Pauahi Street, Suite 2
Hilo, HI 96720-4224
Phone: (808) 961-8379

(808) 961-8619 (TTY)
(808) 961-88617 (Fax)
Email: tspinolacampbell@co.hawaii.hi.us

County of Maui

Roland Prieto
WIA Executive Director
200 S. High Street, Suite 305
Wailuku, HI 96793
Phone: (808) 270-8225 (Voice)
(808) 270-7995 (Fax)
E-mail: Roland.Prieto@mauicounty.gov

County of Kauai

Linda Nuland-Ames
EEO/ADA Coordinator
Phone: (808) 241-6203
E-mail: mayorsada@kauai.gov

10. Current State or County employees may also file a complaint or grievance with their union in their respective counties:

**HGEA Headquarters &
Oahu Division Office**

888 Mililani St., Suite 601
Honolulu, HI 96813-2991
Phone: (808) 543-0000 or 536-2351
Fax: (808) 528-4059
E-mail: oahudiv@hgea.org

Hawaii Division Office

495 Manono St.
Hilo, HI 96720-4422
Phone: (808) 935-6841
Fax: (808) 961-2437
E-mail: hawaiidiv@hgea.org

Maui Division Office

2145 Kaohu St., Suite 206
Wailuku, HI 96793-2257
Phone: (808) 244-5508
Fax: (808) 244-3621
E-mail: mauidiv@hgea.org

Kauai Division Office

3213 Akahi St.
Lihue, HI 96766-1108

Phone: (808) 245-6751
Fax: (808) 245-9632
E-mail: kauaidiv@hgea.org

11. Aliens/Intending citizens may file a complaint with:

U.S. Department of Justice
Office of Special Counsel
1730 M St. NW #218
P. O. Box 27728
Washington, D.C. 20038-2217
Phone: (202) 254-3600 (Voice)

OR

Department of Labor and Industrial Relations
Equal Opportunity Officer
830 Punchbowl Street, Room 340
Honolulu, HI 96813
Phone: (808) 586-8771 (Voice)
(808) 586-3784 (TTY/TTD)
1-888-569-6859 (Neighbor Island TTD)

12. Contents of Complaints

Each complaint shall be filed in writing and shall:

1. Be signed by the complainant or their authorized representative,
2. Contain the complainant's name and address (or specify another means of contacting them),
3. Identify the alleged discriminating official (ADO); and
4. Describe the complainant's allegations in sufficient detail to allow for determination whether:
 - ✓ The appropriate agency has jurisdiction over the complaint;
 - ✓ The complaint was timely filed; and
 - ✓ The complaint has apparent merit; i.e., whether the allegations, if true, violate any of the nondiscrimination and equal opportunity provisions of current statutes.

13. Right to Representation

Complainants have the right to be represented by an attorney or other individuals of their own choice.

14. Complaint Processing (DLIR/RECIPIENT ONLY):

1. The EO Officer shall hold a meeting with the complainant within seven working days of receipt of the complaint to hear the complaint and attempt to resolve the problem. The complainant shall be provided procedures for alternative dispute resolution (ADR) and offered the option of proceeding with ADR or customary process.
2. The complainant shall be advised of the options available for redress and given a Notice to Individuals Filing Discrimination Complaints (see Appendix A).
3. The EO officer will assist the complainant in completing the DLIR Form EO-1 (see Appendix B), if requested. Receipt of the complaint will be acknowledged in writing within five working days and shall contain a detailed description of the issues, whether the issues have been accepted, and the reason for any rejection of any issues by the Director/Executive.
4. The EO officer shall investigate the complaint, collecting all pertinent data, interviewing parties involved, and documenting the investigation.
5. Where the case appears to place the burden of proof on the Department/recipient, the EO Officer will attempt an informal resolution of the situation with management, as appropriate.
6. The EO Officer shall prepare a report to the Director/Executive describing the case, results of the investigation, and conclusion; and recommend a course of action or response to the complaint.
7. The Director/Executive shall inform the complainant of the decision in writing within ninety (90) days after receipt of the formal complaint, such time limit may be extended for good cause as determined by the Director, Civil Rights Center. The Director/Executive's decision shall include, as applicable, the action or remedy to be taken in response to a valid complaint, the reasons for the dismissal of the complaint, or other options for redress that can be pursued by the complainant. If the complainant is

dissatisfied with the final decision, they may still file with the Civil Rights Center (for WIA matters), Hawaii Civil Rights Commission, the U.S. Department of Justice (for Aliens/Intended Citizens), or the U.S. Equal Employment Opportunity Commission within the time frames set by those agencies or they may file a civil suit in state or federal court.

8. Complainants who file with DLIR/recipient must wait until a decision is issued or until 60 days have passed, whichever is sooner, before filing with the Director CRC. If the complainant has not been provided with a written decision within 60 days of the filing of the complaint, the complainant need not wait for a decision to be issued, but may file a complaint with the Director CRC within 30 days of the expiration of the 60-day period.

9. Where the complaint does not appear valid (no prima facie case), the complainant will be advised of the reasons and that the complaint will not be pursued through the complaint process and to pursue other avenues of redress if not satisfied.

15. Alternate Dispute Resolution (ADR) Processing

1. Any complainant who wishes to file a complaint will be given the option of using ADR as a means of resolving their complaint.

2. Complainants will be directed to the DLIR Equal Opportunity Officer who will evaluate the case and determine whether assignment of the case to the Mediation Centers of Hawaii is appropriate. The Mediation Centers of Hawaii will schedule a meeting between all parties and the mediator within ten (10) working days after receipt of the case.

3. Upon completion of mediation, the Mediation Centers of Hawaii will provide a disposition of the case within forty-eight hours from the time mediation ends.

4. All records and discussions that arise or occur during mediation shall be kept confidential and not be disclosed to anyone.

5. Parties to any agreement reached under ADR may file a complaint with the Director CRC within 30 days of the date on which the non-breaching party learns of any alleged breach in the agreement.

B. Complaints Prohibited by Federal and/or State Statutes against Employment Discrimination Only

1. In addition to the federal requirement that programs receiving federal financial assistance shall not discriminate against anyone (including applicants for benefits and services, recipients, participants, and other beneficiaries), both *federal* and *state* laws prohibit discrimination by **employers, unions, and employment agencies** against **employees** and **job applicants**.

Federal law prohibits discrimination because of:

- Race
- Color
- Religion
- Sex
- National Origin
- Age
- Disability, or
- Genetic Information
- Political affiliation or belief

Hawaii state law prohibits discrimination because of:

- Race
- Sex, including gender identity or expression
- Sexual orientation
- Age
- Religion
- Color
- Ancestry
- Disability
- Marital status
- Arrest and court record
- Domestic or sexual victim status

- **National guard participation**
- **Assignment of income for child support obligations**
- **Breastfeeding**
- **Credit history or credit report**

Both federal and state law prohibits retaliation against any individual for opposing prohibited discrimination, filing a complaint, or testifying or assisting in any proceeding regarding prohibited discrimination.

2. Where to File

If you think you have been subjected to **employment** discrimination, you can file a complaint with the Hawai'i Civil Rights Commission (HCRC) or the U.S. Equal Employment Opportunity Commission (EEOC). The deadline for filing a complaint with the HCRC is 180 days from the date of the alleged discriminatory act (or last act in a pattern of ongoing discrimination). The deadline for filing an EEOC complaint is 300 days.

3. FOR MORE INFORMATION, CONTACT:

Hawai'i Civil Rights Commission (HCRC)
830 Punchbowl Street, Room 411
Honolulu, Hawai'i 96813
Phone: (808) 586-8636
TDD: (808) 586-8692
Neighbor Islands, call toll free:
Kaua'i: 274-3141, Ext. 6-8636#
Maui: 984-2400, Ext. 6-8636#
Hawai'i: 974-4000, Ext. 6-8636#
Lana'i & Moloka'i: 1-800-468-4644, Ext. 6-8636#
Email: DLIR.HCRC.INFOR@hawaii.gov
Website: <http://labor.hawaii.gov/hcrc>

Or

U.S. Equal Employment Opportunity Commission (EEOC)
Honolulu Local Office
300 Ala Moana Boulevard, Room 7-127
Honolulu, Hawai'i 96850
Phone: (808) 541-3118
Toll-Free: 1-800-669-4000
Website: <http://www.eeoc.gov>

4. Affected County staff also may file a complaint with their respective county as listed in item A.9 above.

5. Affected State or County staff may file a complaint with the union in their local areas as listed in item A.10 above.

State of Hawaii
Department of Labor and Industrial Relations

**NOTICE TO PERSONS WHO BELIEVE THEY HAVE
BEEN DISCRIMINATED AGAINST**

- Any person who believes that they or any specific class of individual has been or is being subjected to discrimination prohibited by Title VII of the Civil Rights Act of 1964, as amended; the Americans with Disabilities Act of 1990, as amended; the Rehabilitation Act of 1973, as amended; the Age Discrimination in Employment Act of 1967, as amended the Immigration Control and Reform Act, as amended; WIA Section 188; 29 CFR Part 37; Chapter 378, Hawaii Revised Statutes; the Older American Act, as amended; the Social Security Act, as amended; and/or the Equal Pay Act of 1963, as amended, may file a written complaint by themselves or by a representative.
- An EO complaint Form, DLIR-WIA EO Form #1 (see Appendix B), is to be submitted to register your complaint. If you choose to present your complaint orally, you will be asked to sign a DLIR-WIA EO Form #1 and it will be completed for you based on information you provide.
- Each complaint filed shall be signed by the complainant or their authorized representative; contain the complainant's name and address (or specify another means of contacting them); identify the alleged discrimination official (ADO); and describe the complaint's allegations in sufficient detail to allow for the determination whether, the appropriate agency has jurisdiction over the complaint, the complaint was timely filed, and the complaint has apparent merit.
- Each complainant has the right to be represented by an attorney or other individual of their own choice.
- You may request notification in writing of each of the steps taken in the processing of your complaint and of any decision reached at any of these steps. You will be notified ahead of time of any inquiry or conference to be held regarding your complaint.
- You and all participants in the investigation process are assured freedom from restraint, interference, coercion, or reprisal. The identity of complainants and witnesses shall be kept confidential except to the extent necessary to ensure a fair determination of the issues.

ATTACHMENT 1

- You may withdraw your complaint under departmental procedures at any time by submitting a Withdrawal/Release of EO Complaint Form, DLIR-WIA EO Form #2, (see Appendix C). Pursuant to current regulations, a complaint must be filed within 180 days of the alleged discrimination. Please refer to the State of Hawaii Department of Labor and Industrial Relations Equal Opportunity Complaint Procedures for more information.

CONFIDENTIAL

Appendix B

STATE OF HAWAII
Department of Labor and Industrial Relations
EQUAL OPPORTUNITY COMPLAINT FORM
(Please Print)

Case Number _____ SSN XXX-XX- Date/Timed
Received _____

Name _____

Address _____

City _____ State _____ Zip Code _____

Telephone: Home _____ Business _____

Basis for alleged discrimination (Please Mark One)

Federal Statutes (Title VI, VII, and IX, Civil Rights Act of 1964, as amended; Americans with Disabilities Act of 1990, as amended; Equal Pay Act of 1963, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; 38 U.S.C. 4212 of the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended; Immigration Reform Act; Older American Act, as amended; Social Security Act, as amended; or 29 CFR Part 37)

- | | | |
|-------------------------------------|--|--|
| <input type="checkbox"/> Sex/Gender | <input type="checkbox"/> National Origin | <input type="checkbox"/> Disability |
| <input type="checkbox"/> Age | <input type="checkbox"/> Political Affiliation | <input type="checkbox"/> Citizenship/lawfully admitted immigrant |
| <input type="checkbox"/> Race | <input type="checkbox"/> WIA Title I Participation | |
| <input type="checkbox"/> Color | | |
| <input type="checkbox"/> Religion | | |

Nature of the alleged discrimination (Examples: recruitment, interviewing, testing, selection, promotion, demotion, worksite placement, performance evaluation, training, transfer, discharge, work assignment, leave of absence, pregnancy, benefit approval, participant selection, job referral). *Please specify:*

Explain/describe briefly how and/or why you believe you were discriminated against. Be specific: include the name(s) of the individual(s) involved, the remedy/relief you are seeking (what you want to have done) if your complaint is found to be valid. Please use reverse if you require more space.

CERTIFICATION: By my signature below, I certify that the statement of my complaint above and on any page(s) attached is true to the best of my knowledge and belief. I also agree to notify the Equal Opportunity Officer if I change my address or telephone number(s). I further understand that I may withdraw my complaint at any time by submitting a Withdrawal and Release form DLIR EO Form #2.

Date

Signature

Appendix C

State of Hawaii
Department of Labor and Industrial Relations

**WITHDRAWAL/RELEASE OF
EQUAL OPPORTUNITY COMPLAINT**

Name (<i>Please print</i>)	Complaint number
Nature of complaint	Date filed
<p style="text-align: center;">STATEMENT</p> <p style="text-align: center;">I hereby withdraw my complaint of discrimination. I further release and forever discharge the State of Hawaii, Department of Labor and Industrial Relations/recipient, and all their past and present officers, employees, and agents from any and all claims, demands, actions, causes of actions, or suits at law or in equity, know or unknown, concerning the act or actions giving rise to or otherwise related to the complaint indicated above.</p> <p style="text-align: center;">I have read and fully understand the foregoing, and make this withdrawal and release voluntarily and of my own free will, without coercion or duress from anyone.</p>	
Signature of complainant	Date