

U.S. Department of Labor

Office of the Assistant Secretary
for Administration and Management
Washington, D.C. 20210

DEPT. OF LABOR AND
INDUSTRIAL RELATIONS
HONOLULU OFFICE
2014 APR 14 PM 2: 22



April 10, 2014

Dwight Takamine
Director
Department of Labor and Industrial Relations
830 Punchbowl Street
Honolulu, HI 96813

Dear Mr. Takamine:

We have completed our review of the compliance of the Hawaii Department of Labor and Industrial Relations, Division of Unemployment Insurance, with the nondiscrimination and equal opportunity provisions of WIA and 29 CFR Part 37. The review focused on whether Hawaii's Unemployment Insurance (UI) program is providing services and information in languages other than English, as required generally by WIA Section 188 and specifically by 29 CFR 37.35.

Subject to the implementation of commitments detailed in our Conciliation Agreement dated April 4, 2014, the violations cited in the Agreement shall be deemed resolved. This does not preclude a future determination of noncompliance based on a finding that the commitments are not sufficient to achieve compliance.

A copy of the signed agreement is attached for your records.

We sincerely appreciate the cooperation and courtesies extended by you and your staff during the conduct of the compliance review.

Sincerely,

A handwritten signature in black ink that reads "Roger Ocampo". The signature is written in a cursive, flowing style.

Roger Ocampo
Chief, Office of Compliance and Policy

Attachment

cc:

Jade T. Butay, Deputy Director, Department of Labor and Industrial Relations
830 Punchbowl Street, Room 321, Honolulu, Hawaii 96813

Virginia Hamilton, Regional Administrator, U.S. Department of Labor/ETA
90 7th Street, Suite 17-300, San Francisco, CA 94103

Gay Gilbert
U.S. Department of Labor/ETA, Gilbert.Gay@dol.gov

**CONCILIATION AGREEMENT
BETWEEN THE U.S. DEPARTMENT OF LABOR
AND
THE STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**

PART I: General Provisions

1. The parties to this Agreement are the United States Department of Labor (DOL or the Department) and the Hawai'i Department of Labor and Industrial Relations (DLIR).
2. The DOL has jurisdiction of this matter under Section 188 of the Workforce Investment Act of 1998, as amended, 29 U.S.C. § 2801 et seq. and Title VI of the Civil Rights Act of 1964, as amended, regulations implementing these statutes, and Executive Order 13166.
3. The violations set forth in Part II of this Agreement were found by the DOL's Civil Rights Center (CRC) during a compliance review of DLIR initiated by CRC on June 24, 2013, and specified in a Letter of Findings issued on August 30, 2013. This Agreement is intended to resolve these violations.
4. DLIR agrees that the remedial provisions of this Agreement will be incorporated into the Methods of Administration (MOA) for the State of Hawai'i as of the effective date of the Agreement. Subject to DLIR's performance of all actions it commits to take in this Agreement and in the State of Hawai'i's MOA, the violations listed in Section II of this Agreement will be deemed resolved. However, DLIR is advised that the commitments contained in this Agreement do not preclude future determinations of noncompliance based on a finding that the commitments are not sufficient to achieve compliance.
5. DLIR agrees that CRC may review compliance with this Agreement. As part of such review, CRC may require written reports, and may inspect such premises, interview such witnesses, and examine and copy such documents, as may be relevant to the matter under investigation and pertinent to DLIR's compliance. DLIR shall maintain all records related to its compliance with this Agreement for a period of not less than three (3) years from the expiration date of the Agreement.
6. Nothing herein is intended to relieve DLIR from the obligation to comply with the requirements of the statutes and regulations referenced in Paragraph 2 above or any other equal opportunity statute or executive order or its implementing regulations.

7. DLIR agrees that there will be no retaliation of any kind against any beneficiary of this Agreement or against any person who has provided information or assistance, filed a complaint or participated in any way in any proceeding in this matter.
8. If at any time in the future, CRC believes that DLIR has violated any portion of this Agreement, the CRC Director will promptly issue a Notification of Breach of Conciliation Agreement (Notification), pursuant to 29 CFR Part 37.102 through Part 37.105. Such Notification will be sent to DLIR, the Governor of Hawai'i, and appropriate grant making agencies, and will:
 - a. Specify any efforts made to achieve voluntary compliance, and indicate that those efforts have been unsuccessful;
 - b. Identify the specific provisions of the Conciliation Agreement that have been violated;
 - c. Where appropriate, determine liability for the violation and the extent of the liability;
 - d. Indicate that failure of DLIR to come into compliance within 10 days of the receipt of the Notification may result, after opportunity for a hearing, in the termination, denial, or discontinuation, as appropriate, of financial assistance provided by DOL, or in referral to the U.S. Department of Justice with a request to file suit against DLIR;
 - e. Advise DLIR of its right to request a hearing under the applicable procedures set forth in 29 CFR Part 37.111; and
 - f. Include a determination as to the Governor's liability, if any, in accordance with the provisions of 29 CFR Part 37.52.

The Notification of Breach of Conciliation Agreement is considered the DOL's formal complaint. To request a hearing, DLIR must file a written answer to the Notification within 30 days of receipt of the Notification, pursuant to the procedures set forth in 29 CFR Part 37.111(b).

Where CRC believes that DLIR has violated this Conciliation Agreement, CRC may seek enforcement of the Agreement itself, and will not be required to provide proof of the underlying violations resolved by this Agreement.

Liability for violation of this Agreement may subject DLIR to sanctions as set forth in 29 CFR Part 37.110(a).

PART II: Specific Provisions

1. **Violation:** DLIR-Unemployment Insurance Division (UID) did not provide services and information in appropriate languages other than English in order for individuals to be effectively informed about, or able to participate in, the unemployment insurance program as required by 29 CFR Part 37.35(a). Specifically, DLIR-UID provides comprehensive content, including application for unemployment benefits, through an online platform, but provides the content in English only, even though a significant number or proportion of the population DLIR serves needs services and/or information in languages other than English.

2. **Remedy – DLIR- UID**
 - a. DLIR will ensure that posters are displayed in prominent areas in each local UID office listing major languages that limited English proficient (LEP) individuals can point to if language services are needed.
 - b. Effective July 2013, “Translation/Interpretation Assistance Insert” is included with all monetary and nonmonetary determinations mailed to claimants. This “important message” insert, translated into nine languages (Ilocano, Tagalog, Chuukese, Marshallese, Spanish, Vietnamese, Chinese, Korean, and Japanese), advises LEP individuals that benefit rights are affected and to report to the local office immediately if translation assistance is needed.
 - c. Effective August 2013, information translated into nine language was added to the UID website, including information about access to free interpretation services if needed and how to apply for unemployment insurance benefits in those nine languages.
 - d. Effective September 2013, links to the LEP Assistance Information were added to the UID main website filing webpage in these same nine languages.
 - e. Work with community based organizations and other stakeholders to improve access of LEP individuals to UI services, including the availability of language assistance services.
 - f. Ensure that UID staff receives training on how to identify LEP contact situations and how to provide the appropriate interpreter services for LEP individuals in the eligibility determination process.

DLIR’s Language Access Plan; Policy Directives

Within ninety (90) days of the effective date of this Agreement DLIR agrees to develop and submit to CRC for approval Language Access Policy Directives that set forth standards, operating principles, and guidelines governing the delivery of language

appropriate services, with particular attention to online platforms. These Policy Directives will require the DLIR and its staff to ensure meaningful access for LEP individuals. These policy directives will be available to the public.

DLIR agrees to establish an LEP Working Group responsible for the revision and implementation of DLIR's Language Access Plan. The composition of the Group will reflect DLIR's organizational structure. In addition, DLIR shall consult with representatives from community-based organizations and agencies with experience working with LEP individuals and in ensuring access to services from DLIR from LEP individuals.

Within 30 days of the effective date of this Agreement, DLIR shall provide a copy of its Language Access Plan dated July 1, 2011 to June 30, 2013 to CRC. Additionally, within 120 days of the effective date of this Agreement, DLIR shall submit an updated Language Access Plan to CRC for approval. The Plan shall be compliant with LEP plan requirements as specified in the DOL's Policy Guidance to Federal Financial Assistance Regarding the Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, 68 Fed. Reg. 32290 (May 29, 2003). DLIR's Language Access Plan applies to DLIR-UID.

DLIR will address the following key components in its Language Access Plan:

- Identification of persons charged with implementation of the Plan;
- Identification and assessment of LEP communities;
- Notice of language assistance services on the website, over the phone and in offices where individuals may seek services;
- Training for staff on the Plan's policies and procedures; and
- Monitoring and updating the Plan, policies and procedures.

The LEP Plan must also provide for the following:

- Evaluation of current response to LEP individuals' needs by, among other things, conducting an inventory of languages most frequently encountered, identifying the primary channels of contact with LEP community members (e.g. phone, in person or the website), and reviewing agency programs and activities for language accessibility, with particular attention to web-based platforms
- Review of LEP services and LEP policies, plans and protocols every two years pursuant to the State of Hawai'i's language access law;

- Ensure that staff receives training regarding how to competently identify LEP contact situations and takes the necessary steps to provide meaningful access for LEP individuals;
- Notify the public, through mechanisms that will reach members of LEP communities served by DLIR of its LEP policies, plan and procedures and LEP access-related developments. Methods for publicizing language assistance include:
 - Posting signs in intake areas at in person offices and other entry points;
 - Stating in all written materials including hard-copy and website materials that language access services are available from the agency in appropriate languages; and
 - Working with community-based organizations and other stakeholders to inform LEP individuals of DLIR's services, including the availability of language assistance services.
- When considering hiring criteria, assess the extent to which non-English language proficiency would be necessary for particular positions or to fulfill DLIR's LEP Plan.

Every two years, DLIR will review the effectiveness of the LEP Plan, and evaluate potential changes to improve the Plan, its policies and procedures. This assessment must be done by tracking the number of interpreters requested by language, assessing changes in the population of LEP persons, the frequency of encounters with members of LEP groups, and the availability of resources including technological advances. The evaluation may include identification of areas of improvement and development of any corrective action including the number of persons requesting services, the assessment of both written and oral language needs, the review of whether staff members adequately understand and implement LEP policies and procedures, and the collection of feedback from DLIR customers, staff, and LEP communities and groups in the State of Hawai'i.

3. UID Background

a. Data

According to United States Census data:

- 1) In 2010, the total population of Hawai'i was 1,360,301. The groups with the highest potential for LEP are the Asian and Pacific Islanders: Filipino (25% of the population), Japanese (23% of the population), Chinese (15% of the population), and Pacific Islanders (6%) of the population.
- 2) Regarding data gathered on languages spoken in the home in Hawai'i for the period from 2007 through 2011, the total population was 1.25 million with 75% (936,000) speaking only English. Of the remaining population, the largest

bilingual groups were Other Pacific Islander Groups (9% total with no specific group breakdown), Tagalog (5%, no Ilocano), Japanese (4%), Chinese (3%) and Spanish (2%).

The DLIR Characteristics of the Insured Unemployed in Hawai'i reports that the following demographic data based on national origin or ancestry. (These figures do not represent the LEP population.):

- 1) Calendar Year (CY) 2012: The average annual number of unemployment insurance claimants was 12,076 including: 19% or 2,307 Filipino, 9% or 1,112 Japanese, 5% or 634 Other Pacific Islander, and 3% or 386 Chinese. (Percentages are rounded to the nearest tenths.)
- 2) CY 2011: The average annual number of unemployment insurance claimants was 13,711 including: 19% or 2,552 Filipino, 9% or 1,296 Japanese, 5% or 707 Other Pacific Islander, and 3% or 466 Chinese.
- 3) CY 2010: The average annual number of unemployment insurance claimants was 16,550 including: 19% or 3,138 Filipino, 9% or 1,515 Japanese, 5% or 878 Other Pacific Islander and 4% or 613 Chinese.

According to DLIR research and statistical data, the top three languages used in LEP unemployment related encounters were Cantonese, Ilocano, and Tagalog from January 2011 through June 2013.

b. Services Provided By DLIR-UID

DLIR-UID is charged with the administration of the unemployment insurance laws and regulations. Its primary mission is to provide temporary financial assistance to qualified workers who are unemployed through no fault of their own and meet the legal requirements of the law. To accomplish its mission, DLIR-UID provides services in multiple ways: in person, by telephone, and through a website. DLIR-UID has three offices on the island of O'ahu, two offices on the Big Island of Hawai'i, one office on Kauai, one office on Maui, and one office on Moloka'i.

At each of these offices, claimants are assisted in person and if interpreters are needed they are provided either in person or by telephone. When interpreters are provided by telephone, DLIR-UID uses professional language interpreter services. A claimant may also receive services, including filing a claim, by telephone. Interpreters are also provided by telephone. Finally, claimants may access information and file claims via the UID website. Internet filings were launched in May 2009; DLIR-UID began to make filing through a website available for certain types of claims only and incrementally added different kinds of claims until July 2012 when all types of unemployment insurance claims were serviceable via the website. UID staff who

encounter LEP individuals are aware of procedures to obtain interpretation assistance, either by using bilingual staff or contracting for private interpreter services, for in-person situations and using professional language services for telephone filing.

Hawai'i is one of the few states in the nation that has not converted local offices to call centers that have limited, or no public access due to budgetary considerations. The UID has continued to provide local office presence for the community because our unique geographic situation requires responsiveness to unemployed claimants that need special assistance on each island. Jobless persons who are unable to, or have difficulty using telephone or online systems may walk into a local office that is open daily and fully staffed to provide the entire range of unemployment insurance-related services, including claim applications, adjudications, filing appeals and general information.

c. Language Access in Hawai'i

Since 2006, Hawai'i has had a language access law that requires all state agencies to take "reasonable steps to ensure meaningful access to services, programs, and activities by limited English proficient persons" by taking into account the number of limited English proficient persons served or encountered; the frequency that limited English proficient persons come into contact with the services, programs or activities; the nature and importance of the services, programs, or activities; and the resources available. In enacting Hawai'i's language access law, the state legislature intended that language access services required by the statute be guided by the requirements established by Executive Order No. 13166 and applicable provisions of federal law, regulations, and guidance.

Since 2007, DLIR has had a Language Access Plan that has been submitted to the State of Hawai'i's Office of Language Access as required by the state language access law. Among its responsibilities, the Office of Language Access, through its Executive Director, "shall...[r]eview and monitor each state agency's language access plan for compliance." DLIR's language access plan has been updated from time to time.

PART III: Reporting

DLIR agrees to submit progress reports to CRC on the actions taken to comply with Part II of this Agreement every six months after the effective date of this Agreement, and thirty days prior to its expiration. The detailed written reports will document the efforts made to comply with the language access requirements of Section 188 of the Workforce Investment Act and Title VI of the Civil Rights Act.

The reports shall include, but not be limited to, the following:

1. The actions DLIR has taken or intends to take to comply with the agreement and execute the LEP Plan, including:
 - a. Any further policies or procedures drafted or issued for these purposes;
 - b. Any notices, forms, and signs drafted or issued related to language access; and
 - c. Any other accomplishments or objectives reached or progress made toward the requirements in this Agreement.
2. Data regarding request for language services by DLIR agency or office, location, language, and the form and mode of language assistance requested, and how those requests were handled pursuant to the LEP Plan, including data that indicates:
 - a. Instances in which language assistance is not provided and the reason(s) therefor.
3. Data on the application of the LEP Plan, including the number of interpreters and bilingual staff used, broken down by:
 - a. Event, to include:
 - i. DLIR agency or office, including location; and
 - ii. Type of event;
 - b. Interpreter, to include:
 - i. Language;
 - ii. Employment status as bilingual staff, staff interpreter, or contractor; and
 - iii. State of residence
4. Information regarding problems encountered in implementing the LEP Plan, including feedback gathered from customers, staff, and the general public; and
 - a. The process established to receive and respond to language access complaints;
 - b. The number, nature, and disposition of any language access complaints;
5. The steps taken to notify the customers, customer representatives, community groups, and public of the policies or procedures to implement the LEP Plan, and any responses thereto;
6. The trainings provided to managers, hearing officials, staff, and others regarding the LEP Plan and policies and any related language access matters, including the content of the

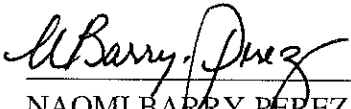
- trainings, training materials, dates held, trainers names and biographies, and names and positions of attendees; and
7. Once a year, the report shall include figures on spending incurred to ensure meaningful language access.

PART IV: Termination Date

This agreement shall terminate on January 31, 2016, unless CRC notifies DLIR in writing prior to that date that the DLIR has not satisfied the terms of this Agreement and specifies the remedy or corrective action necessary to address the violation cited in this Agreement. Notwithstanding the termination of this Agreement, DLIR acknowledges that it will comply with Title VI for so long as it continues to receive Federal financial assistance.

For the U.S. Department of Labor:

For the Department of Labor and
Industrial Relations, State of Hawai'i:



NAOMI BARRY-PEREZ
Director
Civil Rights Center

Dated: 4 April 2014



DWIGHT TAKAMINE
Director

Dated: 4/2/14