

Element 9 - Procedures for Effecting Corrective Actions and Applying Sanctions

(29 C.F.R. § 38.90-101)

PART A

The Governor of the State of Hawaii will comply with all requirements of 29 C.F.R. § 38 related to corrective actions and sanctions for violations of the non-discrimination and equal opportunity provisions of the WIOA and 29 C.F.R. § 38.

Corrective actions and sanctions are intended to guarantee equal access to programs, activities, and employment opportunities provided by WIOA financially assisted recipient organizations. Corrective actions must be appropriate for the violation identified and serve to end the discrimination or redress specific violation(s).

A violation is a failure to comply with WIOA regulations. A violation may range in seriousness from an infraction, or a technical violation, to a more significant discrimination violation.

The violation may be identified as a result of (a) a monitoring review; (b) a discrimination complaint; or (c) both a monitoring review and a discrimination complaint.

Local EO Officers are instructed to notify the State EO Officer if they are contacted directly by the U.S.DOL CRC regarding an alleged violation. All corrective actions, if necessary, will be reported to the U.S.DOL CRC.

Effective Corrective Actions

Corrective action means any action designed to eliminate a violation. Violations identified through compliance reviews, through a complaint or series of complaints, and/or by an apparent trend of disparate treatment will necessitate corrective actions. Taking corrective action requires identifying the violation(s) that must be corrected.

1. Technical Violations

Technical violations may include, but are not limited to, failure to designate an EO Officer who is a senior level employee whose responsibilities and activities are not in conflict with other duties, failure to collect data, failure to include the required language in assurances, and failure to display an EO poster notice.

2. Discrimination Violations

Discrimination violations may include findings of disparate treatment, disparate impact, and failure to provide reasonable accommodations.

3. Appropriate Corrective Action

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Corrective actions must be tailored specifically to each finding and designed to correct the problem completely. The action taken to correct the violation should be appropriate and reasonable according to the violation that has occurred.

If a *technical violation* involved the failure to include tag lines in a communication, the appropriate action would be to re-issue the communication with the tag lines included.

For each corrective action of a *technical violation*, the recipients and

Local EO Officer will establish the minimum time frame necessary to correct the violation completely. Technical assistance may be provided to assist with deficiencies or noncompliance that cannot be resolved or corrected voluntarily. The corrective action must be completed within forty-five (45) days of the recipient's written notification of the technical violation.

To correct a *discrimination violation*, the appropriate corrective action may be to provide "make-whole relief." Make-whole relief is "making the person whole" or bringing the person to the condition he or she would be in, if the discrimination had not occurred. Such relief might involve back pay, front pay, retroactive benefits, training, or any service discriminatorily denied.

Corrective actions for a *discrimination violation* will be designed to end discrimination and/or redress the specific violation(s) and must assure discrimination does not recur. Where appropriate, it may also include educating individuals responsible for the violation.

4. Document That Corrective Actions and Prospective Relief Plans Are Being Maintained

Corrective Action Process

When a determination has been made that a violation of the nondiscrimination and equal opportunity provisions of WIOA has occurred, the reviewing EO Officer shall notify the violating recipient through issuance of the Monitoring Report

- a. Within thirty (30) working days of the completion of the review, the reviewing EO Officer shall prepare a written (Monitoring) Report.
 1. The report shall be disseminated to the appropriate executives/managers and State EO Officer.

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2. The report shall discuss, in detail, areas of pending or noncompliance and outline those areas that are found to be in compliance.
- b. Where a *technical violation* has been (or can be) corrected immediately, an assurance shall be provided by the recipients to the Local and State level EO Officers to document the corrective action taken and the prospective relief that is planned. A written assurance will attest that the recipient will continue to take steps to correct the deficiency and avoid recurrences:

An example of a corrective action plan: *Failing to include taglines in a communication*. The documentation shall include:

- i. An explanation of the corrective action, that the communication shall be reissued with the taglines added; and
- ii. The timeframe for reissuing the communication (which sets the minimum time necessary to correct the violation).

Prospective Relief: Curative and preventive steps voluntarily taken to ensure that a violation does not re-occur in the future. The recipient will plan to ensure that all future notices will include the required language by:

- i. Changing the policy, practices, or procedure that allowed for the violation;
- ii. Developing a new policy;
- iii. Communicating the change in policy; and
- iv. Educating those responsible for implementing the revised procedures.

The local EO Officer and/or the State EO Officer will institute follow-up monitoring procedures to ensure that commitments to corrective and remedial actions are being fulfilled. In the case of a serious violation, or of a deficiency that may not be corrected immediately, a "Conciliation Agreement" shall be negotiated between the party and the Local EO Officer and/or the State EO Officer. The agreement must:

- a.) Be in writing;
- b.) Address the legal and contractual obligations of the recipient;
- c.) Address each cited violation;
- d.) Specify the corrective or remedial action to be taken within a stated period of time to come into compliance;
- e.) Provide for periodic reporting on the status of the corrective and remedial action;

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- f.) State that the violation(s) will not recur;
- g.) State that nothing in the agreement will prohibit CRC from sending the agreement to the complainant, making it available to the public, or posting it on the CRC or recipient's web site;
- h.) State that, in any proceeding involving an alleged violation of the conciliation agreement, CRC may seek enforcement of the agreement itself and shall not be required to present proof of the underlying violations resolved by the agreement; and
- i.) Provide for enforcement for the breach of the agreement.

Impose Sanctions

1. Sanctions

Sanctions are the judicial enforcement actions (i.e., suspension, termination, termination of funding, etc.) which are applied when appropriate corrective actions are not taken in compliance with WIOA regulations.

When all attempts to provide assistance to effect voluntary correction of a violation have failed, or it is apparent that the recipient fails or refuses to correct the violation within the timeframe established, the State of Hawaii DLIR shall impose the established sanction guidelines (Exhibit A).

The State of Hawaii shall issue a Notice of Sanctions that shall be done by the DLIR Director or the State EO Officer.

Upon termination of WIOA Title I financial assistance, the matter shall be referred to the State Attorney General for recoupment of any of all funds as deemed appropriate by the State Attorney General.

A recipient may apply for reinstatement after the termination of financial assistance by petitioning the DLIR Director after one (1) year of the termination. Within thirty (30) days of receipt of the petition, the DLIR Director will issue a decision based on the merits of the petition for reinstatement.

Equal Opportunity Employer/Program

Auxiliary aids and services are available upon request to individuals with disabilities.

TDD/TTY: Dial 711 then ask for (808) 586-8866

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PART B

Supporting Documentation

Exhibit A Non-compliance, Corrective Action, and Sanction Guide