



**STATE OF HAWAII**  
**DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS**  
**Workforce Innovation and Opportunity Act Nondiscrimination Plan**  
**Element Seven – Complaint Processing Procedures**

(29 C.F.R. §§ 38.69 to 38.85, 29 C.F.R. § 38.54(c)(2)(vii), and 29 C.F.R. § 38.54(c)(2)(viii)(E))

**POLICY**

As the State agency with the primary responsibility for carrying out the equal opportunity and nondiscrimination provisions of the WIOA, the DLIR is committed to ensuring that any individual subjected to unlawful discrimination by any employee, program, or activity covered by WIOA is aware of his or her right to file a complaint of discrimination. The DLIR will further ensure that recipients are aware of their obligations to comply with the complaint procedures set forth.

The DLIR has developed complaint procedures that are applicable to all DLIR offices and programs, administratively attached agencies, state programs, county programs, and private agencies receiving federal or state funds from the DLIR (*Exhibit A*). Entities that operate federal/state funded programs for the DLIR, within the State, are also allowed to use the procedures.

In addition, the State and DLIR are committed to establishing procedures for obtaining prompt corrective action or, as necessary, applying sanctions when noncompliance is found. 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. A 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-Level EO Officers are instructed to notify the State-Level EO Officer if they are contacted directly by the CRC regarding an alleged violation. All corrective actions, if necessary, will be reported to the CRC. The State-Level EO Officer will have the overall responsibility for the State of Hawaii EO Monitoring. Each of the Local Workforce Development Area (LWDA) Directors and the Local-Level EO Officers will be responsible for EO Monitoring in their respective counties and report to the State-Level EO Officer. The Local-Level EO Officers will schedule their EO Monitoring of recipients and/or sub-recipients in their county on an annual basis. The State-Level

EO Officer shall be included as part of a collaborative team with the Local-Level EO Officers to do on-site visits of their AJCs annually, unless a complaint is received or a desk audit indicates the need of an immediate on-site review.

Each EO monitoring review shall include a review of each recipient's and/or sub-recipient's compliance with its administrative obligations under WIOA Section 188, 29 C.F.R. § 38, responsibilities it has been assigned in the Nondiscrimination Plan, and programs and activities to determine whether discrimination is occurring. Such monitoring review shall include analysis of data and records collected by the recipient and/or sub-recipient, pursuant to 29 CFR § 38.41, to determine whether a difference in service access based upon race/ethnicity or sex has practical or statistical significance.

Where such differences are found, follow-up investigation shall be conducted to determine if such differences are due to discrimination. A compliance review shall evaluate the extent to which the recipient and/or sub-recipient has fulfilled their requirements.

**1. Required elements of a recipient's complaint processing procedures**

a. Issuance of a Written Notice of Final Action Within 90 Days from Date of Complaint:

Section A.8, of the WIOA Complaint Procedures provides, "The LWDA or DLIR will use a written Notice of Final Action on complaints within 90 days of the date on which the complaint is filed."

b. The Complaint Procedures (*Exhibit B*) Must Contain the Elements Listed in 29 CFR § 38.72 that include:

1. Initial written notice to the complainant that contains:

- an acknowledgment that the recipient has received the complaint,
- notice that the complainant has the right to be represented in the complaint process,
- notice of rights contained in 29 C.F.R. § 38.35, and
- notice that the complainant has the right to request and receive, at no cost, auxiliary aids and services, language assistance services, and that this notice will be translated into the non-English languages as required in §§ 38.4(h) and (i), 38.34, and 38.36.

Section A.18-3, of the WIOA Compliant Procedures provides that, "...Receipt of the complaint will be acknowledged in writing within five (5) working days...", Section A.16 states, "the complainant shall be informed of the right to representation by an attorney or another individual of their choice...", and Section A.17 states, "the complaint has the right to request and receive, at no cost, auxiliary aids and services, language assistance services, and to have the initial notice translated into the non-English languages as required in §§ 38.4(h) and (i), 38.34, and 38.36."

2. A written statement provided to the complainant, that contains a list of issues raised in the complaint and, for each issue, a statement whether the recipients will accept the issue for investigation or reject the issue, and the reasons for each rejection.

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3. A period for fact-finding or investigation of the circumstances underlying the complaint.

Section A.18-4 of the WIOA Complaint Procedures provides that, "After issuing the written acknowledgment, the EO Officer shall conduct an investigation on the issues accepted for investigation by collecting all pertinent data, interviewing parties involved, and documenting the investigation."

4. A period during which the recipient attempts to resolve the complaint. The methods available to resolve the complaint must include alternative dispute resolution (ADR).

Section A.18-1, of the WIOA Complaint Procedures provides that, " The DLIR Equal Opportunity Officer (EO Officer) shall hold a meeting with the complainant within seven working days of receipt of the complaint to hear the complaint and assist the complainant in completing the DLIR Form EO-1 (see Appendix B), if requested. The complainant shall be informed of the right to representation by an attorney or another individual of their choice, and of Alternate Dispute Resolution (ADR) at this time." Section A.18-2 states, "The complainant shall be advised of the options available for redress...and given a Notice to Individuals Filing Discrimination Complaints (see Appendix A)." Further, Section A.18-5 states, in part, "The methods available to resolve the complaint must include ADR..."

5. A written notice of Final Action, provided to the complainant within 90 days of the date on which the complaint was filed, that contains the following information: (1) for each issue raised in the complaint, a statement of either:  
(A) the recipient's decision on the issue and an explanation of the reasons underlying the decision; or (B) a description of the way the parties resolved the issue; and (2) Notice that the complainant has a right to file a complaint with CRC within 30 days of the date on which the Notice of Final Action is received if the complainant is dissatisfied with the recipient's final action on the complaint.

Section A.18-7.a, of the Hawaii Equal Opportunity Procedures provides that, "For each issue accepted for investigation, a statement of the Director's decision on the issue and an explanation of the reasons underlying the decision or a description of the way the parties resolved the issue; and Section A.18-7.b, of the Hawaii Equal Opportunity Procedures provides that the Notice of Final Action shall, "Advise the complainant that the complainant has a right to file a complaint with the CRC within 30 days of the date on which the Notice of Final Action is issued if he or she is dissatisfied with the DLIR Director's final action on the complaint."

- c. The Procedures the Recipient Adopts Must Provide for Alternative Dispute Resolution (ADR).

1. The complainant may attempt ADR at any time after the complainant has filed a written complaint with the recipient, but before a Notice of Final Action has been issued.

Section A.19-1, of the WIOA Complaint Procedures provides that, "Any complainant

who wishes to file a complaint will be given the option of using ADR as a means of resolving the complaint at any time after the complainant has filed a written complaint with the recipient, but before a Notice of Final Action has been issued.

2. The choice whether to use ADR or the customary process rests with the complainant.

Section A.19-1, of the WIOA Complaint Procedures provides, "The choice to use ADR or the customary process rests with the complainant."

3. A party to any agreement reached under ADR may notify the Director in the event the agreement is breached. In such circumstances, the following rules will apply:
  - (i) The non-breaching party may notify with the Director within 30 days of the date on which the non-breaching party learns of the alleged breach, and
  - (ii) The Director must evaluate the circumstances to determine whether the agreement has been breached. If the Director determines that the agreement has been breached, the complaint will be reinstated and processed in accordance with the recipient's procedures.

Section A.19-4, of the WIOA Complaint Procedures provides, "A party to any agreement reached under ADR may file a complaint with the CRC Director in the event the agreement is breached. In such circumstances, the following rules will apply: (a) the non-breaching party may file a complaint with the CRC Director within 30 days of the date on which the non-breaching party learns of the breach; and (b) the CRC Director must evaluate the circumstances to determine whether the agreement has been breached. If the CRC Director determines that the agreement has been breached, the complaint will be reinstated and processed in accordance with the recipient's procedures."

4. If the parties do not reach an agreement under ADR, the complainant may file a complaint with the Director as described in §§ 38.69 through 38.71.

Section A.19-5, of the WIOA Complaint Procedures provides, "If the parties do not reach an agreement under ADR, the complainant may file a complaint with the CRC."

## **2. Violations and corrective actions**

- a. There are two types of violations: technical and discrimination.
  1. 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 may include findings of disparate treatment, disparate impact, and failure to provide reasonable accommodations.
- b. Corrective actions are designed to eliminate violations.

1. 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.
2. 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.
3. For each corrective action of a technical violation, the recipients and Local-Level 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.
4. 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.
5. 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.

### **3. Documenting that corrective actions and prospective relief plans are being maintained**

#### **a. Corrective Action Process**

1. When a determination has been made that a violation of the nondiscrimination or equal opportunity provisions of the WIOA has occurred, the reviewing EO Officer shall notify the violating recipient through the issuance of the Monitoring Report.
  - a. Within thirty (30) working days of the completion of the review, the reviewing EO Officer shall prepare a Monitoring Report that shall be disseminated to the appropriate executives/managers and the State-Level EO Officer and shall discuss in detail areas of pending or noncompliance and outline those areas that are found to be in compliance.
2. Where a technical violation has been or can be corrected immediately, an assurance shall be provided by the recipients to the State-Level and Local-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.
  - b. An example of a corrective action plan to address a technical violation is "Failing to include taglines in a communication." The corrective action plan shall include an explanation of the corrective action, that the communication

shall be reissued with taglines added and the timeframe for reissuing the communication.

- c. A recipient may also engage in prospective relief, which are curative and preventative steps voluntarily taken to ensure that a violation does not reoccur in the future. A recipient can plan to ensure that all future notices will included the required language by changing policies, practices, or produces and educating those responsible for implementing the revisions.
- b. The Local-Level and/or the State-Level 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-Level and/or the State- Level EO Officer. The agreement must:
  1. Be in writing;
  2. Address the legal and contractual obligations of the recipient;
  3. Address each cited violation;
  4. Specify the corrective or remedial action to be taken within a stated period of time to come into compliance;
  5. Provide for periodic reporting on the status of the corrective and remedial action;
  6. State that the violation(s) will not recur;
  7. State that nothing in the agreement will prohibit the 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;
  8. 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
  9. Provide for enforcement for the breach of the agreement.

#### **4. Imposing sanctions**

- a. 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.
- b. 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 DLIR shall impose the established sanction guidelines.

- c. The DLIR shall issue a Notice of Sanctions that shall be done by the either DLIR Director or the State-Level EO Officer.
- d. 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.

**5. Monitoring programs and activities for compliance with limited English proficiency (LEP) obligations**

- a. Between November 3, 2016 to December 1, 2016, the previous State-Level EO Officer conducted LEP compliance checks within the DLIR programs.
- b. As part of the LEP compliance checks, the previous State-Level EO Officer observed whether programs displayed the “Equal Opportunity is the Law” Notice and the Equal Opportunity Complaint Procedure posters; and whether staff followed the DLIR LEP Plan in serving LEP customers (*Exhibit C*).
- c. Reports of the LEP compliance checks ensured that the programs were aware of their responsibilities under the WIOA and the Hawaii Language Access Law (*Exhibits D to F*). Follow-up LEP compliance checks will be conducted in the future.

**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**

## EXHIBITS

- Exhibit A WIOA Bulletin No. 1-17 on WIOA Methods of Administration (MOA) Revision
- Exhibit B State of Hawaii WIOA Equal Opportunity Complaint Procedures and Forms
- Exhibit C LEP Compliance Checklist
- Exhibit D Hawaii Civil Rights Commission LEP Compliance Check
- Exhibit E Labor and Industrial Relations Appeals Board LEP Compliance Check
- Exhibit F Hawaii Occupational Safety and Health LEP Compliance Check