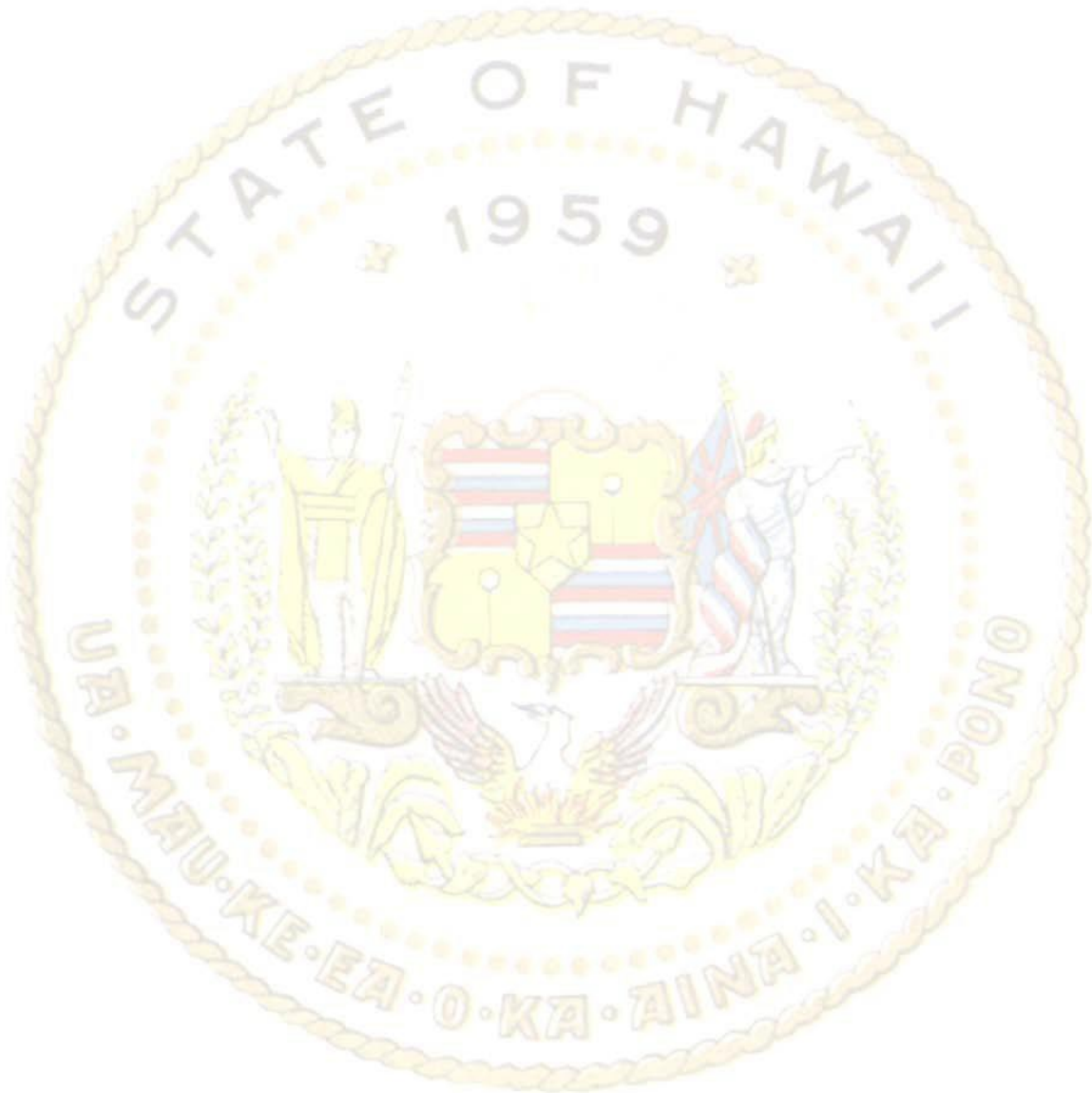


STATE OF HAWAII:
WORKFORCE INNOVATION AND OPPORTUNITY
ACT NONDISCRMINATION PLAN



State of Hawaii
Department of Labor and Industrial Relations
May 2019

Table of Contents

Element One – Assurances	1-1
Element One Exhibits	1-4
Element Two – Equal Opportunity Officers	2-1
Element Two Exhibits	2-6
Element Three – Notice and Communication	3-1
Element Three Exhibits.....	3-5
Element Four – Data and Information Collection and Maintenance...4-1	
Element Four Exhibits.....	4-5
Element Five – Affirmative Outreach	5-1
Element Five Exhibits	5-5
Element Six – Governor’s Oversight Responsibility Regarding Recipients’ Recordkeeping	6-1
Element Seven – Complaint Processing Procedures	7-1
Element Seven Exhibits.....	7-8
Element Eight – Governor’s Oversight and Monitoring Responsibilities for State Programs.....	8-1
Element Eight Exhibits.....	8-6



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

Workforce Innovation and Opportunity Act Nondiscrimination Plan

Element One — Assurances

(29 C.F.R. §§ 38.25 to 38.27, 29 C.F.R. § 38.54(c)(2)(ii), and 29 C.F.R. § 38.54(c)(2)(iii))

The Workforce Innovation and Opportunity Act (WIOA) Section 188 prohibits the exclusion of an individual from participation in, denial of the benefits of, discrimination in, or denial of employment in the administration or connection with any programs and activities funded otherwise financially assisted in whole or in part under Title I of the WIOA because of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity) national origin (including Limited English Proficiency (LEP)), age, disability, or political affiliation or belief, or for the beneficiaries, applicants, and participants only, on the basis of citizenship status, or participation in a program or activity that receives financial assistance under Title I of WIOA.

As a condition to the award of financial assistance from the State of Hawaii Department of Labor and Industrial Relations (DLIR) under Title I of the WIOA, a grant applicant assures that it can comply with the nondiscrimination and equal opportunity provisions required by the WIOA and will remain in compliance for the duration of the award of federal financial assistance. See *Exhibit A* for a sample assurance.

29 C.F.R. § 38.25, requires the following non-discrimination assurance language to appear in certain documents:

"As a condition to the award of financial assistance from the Department of Labor under Title I of the WIOA, the grant applicant assures that it has the ability to comply with the nondiscrimination and equal opportunity provisions of the following laws and will remain in compliance for the duration of the award of federal financial assistance:

Section 188 of the Workforce Innovation and Opportunity Act (WIOA), which prohibits discrimination against all individuals in the United States on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity), national origin (including LEP), age, disability, or political affiliation or belief, and against beneficiaries on the basis of either citizenship status or participation in any WIOA Title I-financially assisted program or activity;

Title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the bases of race, color and national origin;

Section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination against qualified individuals with disabilities;

The Age Discrimination Act of 1975, as amended, which prohibits discrimination on the basis of age; and

Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in educational programs. "

The grant applicant also assures that, as a recipient of WIOA Title I financial assistance, it will comply with 29 C.F.R. § 38.38 (Publications, broadcasts, and other communications) and all other regulations implementing the laws listed above. This assurance applies to the grant applicant's operation of the WIOA Title I-financially assisted program or activity, and to all agreements the grant applicant makes to carry out the WIOA Title-I financially assisted program or activity. The grant applicant understands that the United States has the right to seek judicial enforcement of this assurance.

Every grant applicant and training provider seeking financial assistance under Title I of the WIOA must include in its application the written assurance of nondiscrimination as set out in the narrative above. However, even when the assurance is not incorporated or referred in a document, it is considered incorporated by operation of law pursuant 29 C.F.R. § 38.25(a)(2).

Where the WIOA Title I-financial assistance is intended to provide or is in the form of, either personal property, real property, structures on real property, or interest in any such property or structures, the assurance will obligate the recipient or transferee for the longer of the period during which the property is used or the period during which the recipient retains ownership or possession or the transferee retains ownership or possession without compensating the DLIR for fair market value of that ownership or possession. In all other cases, the assurance will obligate the recipient for the period during which the WIOA Title-I financial assistance is extended. Covenants assuring nondiscrimination and equal opportunity must be contained in instruments transferring real property, structures, or improvements of real property, structures, or interests in real property or structures.

When necessary, language regarding programmatic and architectural accessibility to accommodate individuals with disabilities is also included. Programmatic and architectural accessibility is addressed in more detail in Element Five, Affirmative Outreach.

1. Notice of the Requirement

All recipients, including Local Workforce Development Boards (LWDBs), American Job Centers (AJCs), grant recipients, and recipient state and local agencies shall be informed in writing of the necessity of including this assurance in all contracts, grants, cooperative agreements, applications, and other arrangements.

The notice will inform all recipients that this nondiscrimination assurance is considered incorporated by operation of law in the grant, cooperative agreement, contract or other

arrangement whereby Federal financial assistance under Title 1 of the WIOA is made available, whether or not it is physically incorporated in such document and whether or not there is a written agreement between the U.S. Department of Labor (DOL) and the recipient, the Governor and the recipient, or between recipients. The assurance also may be incorporated by reference in such grants, cooperative agreements, contracts, or other arrangements.

2. Assurance Reviews

The Local-Level EO Officer will monitor all recipients under Title I of the WIOA for compliance in their respective county. The assurance reviews of job training plans, contracts, and policies and procedures shall be administered by the State- and Local-Level EO Officers, as prescribed under 29 C.F.R. §§ 38.28 to 38.33, thus ensuring documents are nondiscriminatory and contain the required language regarding nondiscrimination and equal opportunity. In addition, State- and Local-Level EO Officers will assess the applicant facilities as it pertains to programmatic and architectural accessibility for individuals with disabilities as explained in Element Five.

Policies issued at the State- or Local-Level, as well as any other issuances from other recipients of federal funds under Title I of the WIOA, must not discriminate in either their intent nor their effect. State- and Local-Level EO Officers shall review recipient policy issuances to ensure they are non-discriminatory.

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

EXHIBIT

Exhibit A

Sample — WIOA Contractors' Assurances and Certifications Relating to
Nondiscrimination and Equal Opportunity



STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
Workforce Innovation and Opportunity Act Nondiscrimination Plan
Element Two — Equal Opportunity Officers
(29 C.F.R. §§ 38.28 to 38.33 and 29 C.F.R. § 38.54(c)(2)(vi))

1. Designation of Equal Opportunity Officers

- A. State Level Equal Opportunity Officer— Governor David Y. Ige delegated Scott T. Murakami, the DLIR Director, for oversight of the equal opportunity and nondiscrimination provisions of the WIOA and appointed Christen Lee as the State-Level EO Officer. The State-Level EO Officer works in the same office and reports to the DLIR Director (*Exhibit A*).

Ms. Lee provides oversight and guidance to the Local-Level EO Officers and recipients as well as comply with the requirements of 29 C.F.R. § 38.31 for the State of Hawaii. The State-Level EO Officer is responsible for assisting the Governor with the requirements of 29 C.F.R. § 38.54 (Governor's Obligations to Develop and Implement a Nondiscrimination Plan).

Christen Lee
State-Level Equal Opportunity Officer
Department of Labor and Industrial Relations
830 Punchbowl Street, Room 321
Honolulu, HI 96813
Phone: (808) 586-8148
Fax: (808) 586-9099
TDD/TTY: Dial 711 then ask for (808) 586-8866
Email: dlir.eeo@hawaii.gov

- B. Local-Level Equal Opportunity Officers—the Mayor of each county appoints its WIOA Local-Level EO Officer. The following individuals are the Local-Level Equal Opportunity Officers and are responsible for carrying out the Local-Level EO Officer duties.

City and County of Honolulu:

Denise L. Tsukayama
CAAP, Equal Opportunity Officer/ADA Coordinator
650 South King Street, 10th Floor
Honolulu, HI 96813
Phone: (808) 768-8505

TDD/ TTY: Dial 711 then ask for (808) 768-8505
Fax: (808) 768-8490
E-mail: dtsukayama@honolulu.gov

County of Maui:

Ralph Thomas
Equal Employment Opportunity Specialist
200 S. High Street, 9th Floor
Wailuku, Maui HI 96793
Phone: (808) 463-3168
TDD/TTY: Dial 711 then ask for (808) 270-6292
E-mail: Ralph.Thomas@co.maui.hi.us

County of Hawaii:

Julie Rawlins
Equal Opportunity Officer/ADA Coordinator
101 Pauahi St, Suite 2
Hilo, HI 96720-4224
Phone: (808) 961-8361
TDD/TTY: (808) 961-8619
Fax: (808) 961-8617
E-mail: julie.rawlins@hawaiicounty.gov

County of Kauai:

Linda Nulan-Ames EEO/ADA Coordinator
4444 Rice Street
Lihue, HI 96766
Phone: (808) 241-4924
TDD/TTY: Dial 711 then ask for (808) 241-4924
Fax: (808) 241-6877
E-mail: lnuland@kauai.gov

2 Recipients' obligations regarding Equal Opportunity Officers

All recipients¹ have the following obligations vis-à-vis EO Officers:

- Ensuring that the EO Officer is a senior-level employee reporting directly to the individual in the highest-level position of authority for the entity.
- Designating an individual who can fulfill the responsibilities of an EO Officer.
- Making the EO Officer's name, position title, address, and telephone number (voice and TDD/TTY) public.
- Ensuring that the EO Officer's identity and contact information appear on all internal and external communications about the recipient's nondiscrimination and equal opportunity programs.

- Ensuring that the EO Officer and the EO Officer's staff are afforded the opportunity to receive (at the recipient's expense) the training necessary and appropriate to maintain competency.

3. Equal Opportunity Officer Responsibilities

An Equal Opportunity Officer is responsible for coordinating a recipient's obligations under the WIOA. Those responsibilities include, but are not limited to:

- Serving as a recipient's liaison with Civil Rights Center (CRC);
- Monitoring and investigating the recipient's activities, and the activities of the entities that receive WIOA Title I-financial assistance from the recipient, to make sure that the recipient and its subrecipients are not violating their nondiscrimination and equal opportunity obligations under WIOA Title I. This includes monitoring the collection of data required to ensure compliance with the nondiscrimination and equal opportunity requirements of the WIOA;
- Reviewing the recipient's written policies to make sure that those policies are nondiscriminatory;
- Developing and publishing the recipient's procedures for processing discrimination complaints under §§ 38.72 through 38.73, including tracking the discrimination complaints filed against the recipient, developing procedures for investigating and resolving discrimination complaints filed against the recipient, making sure that those procedures are followed, and making available to the public, in appropriate languages and formats, the procedures for filing a complaint;
- Conducting outreach and education about equal opportunity and nondiscrimination requirements consistent with § 38.40 and how an individual may file a complaint consistent with § 38.69;
- Undergoing training (at the recipient's expense) to maintain competency of the EO Officer and staff, as required by the DLIR Director or the County; and
- If applicable, overseeing the development and implementation of the recipient's Nondiscrimination Plan under § 38.54.

A sample of a Local-Level EO Officer's job description is attached as *Exhibit B*.

4. Equal Opportunity Officer Training

Training for the State-Level EO Officer shall be determined by the DLIR Director. Required training shall be the responsibility of each County to ensure that the designated Local-Level EO Officer is provided training to maintain competency.

The State-Level EO Officer may partner with each Local-Level EO Officers to provide statewide training in discrimination issues. Local-Level EO Officers are required to attend, and if necessary, assist with training in their jurisdictions. Monitoring shall include a review of training for Local-Level EO Officers to ensure compliance.

The previous State-Level EO Officer attended the State-Level Equal Opportunity Officer Conference that was held from December 4, 2017 to December 8, 2017 (*Exhibit C*). The State-Level Equal Opportunity Officer Conference covered a wide range of topics, including Nondiscrimination Plan Development and Coordination, and Monitoring and Statistical Analysis (*Exhibits D to F*).

Presenters and specialists shared information and insight on topics such as retaliation, disability, and complaint processing (*Exhibits G to I*).

Information and procedures learned from the State-Level Equal Opportunity Officer Conference have been incorporated into the Nondiscrimination Plan and will be used to further comply with the WIOA.

Presenters and specialists shared information and insight on topics such as retaliation, disability, and complaint processing (*Exhibits G to I*).

Information and procedures learned from the State-Level Equal Opportunity Officer Conference have been incorporated into the Nondiscrimination Plan and will be used to further comply with the WIOA.

5. Small Recipient Equal Opportunity Officer Obligations

Small recipients (serve fewer than 15 beneficiaries and employs fewer than 15 employees on any given day during the grant year)² are responsible for adopting and publishing complaint procedures and processing complaints, as explained in 29 CFR §§ 38.72 through 38.75. The DLIR will ensure compliance with this requirement through guidance and technical assistance.

6. Service Provider Equal Opportunity Officer Obligations

Service providers³ are not required to designate an EO Officer. The DLIR and the Local Workforce Development Boards (LWDBs) shall ensure service provider compliance with the nondiscrimination and equal opportunity provisions of the WIOA.

¹ Recipient means an entity to which financial assistance under Title I of the WIOA is extended, directly from the Department or through the Governor or another recipient (including any successor, assignee, or transferee of a recipient). The term excludes any ultimate beneficiary of the WIOA Title I-financially assisted program or activity. One-stop partners, as are treated as recipients, are subject to the nondiscrimination and equal opportunity requirements.

Recipient includes, but is not limited to:

1. State-level agencies that administer, or are financed in whole or in part with, WIOA Title I funds;
2. State Workforce Agencies;
3. State and Local Workforce Development Boards;
4. LWDA grant recipients;

5. One-stop operators;
6. Service providers, including eligible training providers;
7. On-the-Job Training (OJT) employers;
8. Job Corps contractors and center operators;

9. Job Corps national training contractors;
10. Outreach and admissions agencies, including Job Corps contractors that perform these functions;
11. Placement agencies, including Job Corps contractors that perform these functions; and
12. Other National Program recipients.

² Small recipient means a recipient who:

- (1) Serves a total of fewer than 15 beneficiaries during the entire grant year; and
- (2) Employs fewer than 15 employees on any given day during the grant year.

³ Service provider means:

- (1) Any operator of, or provider of aid, benefits, services, or training to:
 - (i) Any program or activity that receives WIOA Title I financial assistance from or through any State or LWDA grant recipient; or
 - (ii) Any participant through that participant's Individual Training Account (ITA); or
- (2) Any entity that is selected and/or certified as an eligible provider of training services to participants.

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 Position Description of State-Level Equal Opportunity Officer (Civil Rights and Equal Opportunity Officer in the DLIR Director's Office)
- Exhibit B Representative Sample Position Description for Local Level Equal Opportunity Officer
- Exhibit C State Level Equal Opportunity Officer Conference Agenda
- Exhibit D Nondiscrimination Plan Development Powerpoint Presentation
- Exhibit E Monitoring Report and Observe Exercises
- Exhibit F Monitoring Report Handouts
- Exhibit G Retaliation Powerpoint Presentation
- Exhibit H Disability Powerpoint Presentation
- Exhibit I Complaint Processing Powerpoint Presentation



STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
Workforce Innovation and Opportunity Act Nondiscrimination Plan

Element Three — Notice and Communication

(29 C.F.R. §§ 38.34 to 38.40, 29 C.F.R. § 38.54(c)(2)(viii)(F), and 29 C.F.R. § 38.54(c)(2)(viii)(C))

POLICY

The DLIR is committed to diversity and equal opportunity. 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 all who operate, utilize, and benefit from covered programs and activities under the WIOA are aware of the obligation for equal opportunity and nondiscrimination.

Recipients must provide initial and continuing notice that they do not discriminate on any prohibited ground. The notice must be provided to registrants, applicants, and eligible applicants/registrants, participants, applicants for employment, employees, unions or professional organizations that hold collective bargaining or professional agreements with recipients, subrecipients that receive WIOA Title I-financial assistance from recipients, and members of the public, including those with disabilities, and those with limited English proficiency (LEP). Recipients must take appropriate steps to ensure that communications with individuals with disabilities are as effective as communications with others, and that the notice is provided in appropriate languages to ensure meaningful access for LEP individuals.

1. Equal Opportunity Notice & Poster

A copy of the “Equal Opportunity is the Law” poster (*Exhibit A*) that contains the wording under 29 C.F.R. § 38.35 is available on the DLIR website for download and printing. Participants and employees must be furnished a copy of the notice (*Exhibit B*) to sign and be included as a part of each employee’s and participants file. The notice must also be included in employee handbooks and manuals, including in electronic and paper form if both are available

2. Recipients’ Obligations to Publish & Post Equal Opportunity Notice

The “Equal Opportunity is the Law” notice/poster is displayed prominently throughout the DLIR. All recipients, including the LWDBs, AJCs, grant recipients, and recipient state and local agencies, will display the notice/poster in available and conspicuous physical locations, and on their websites. The notice/poster is provided to all DLIR employees, and all recipients’ participants to sign and certify that they have read, understood, and received a

copy of the notice. The signed notice is filed in the employee's or participant's folder or filed as appropriately for others that are not employees or participants.

3. Notice requirement for service providers

The DLIR provides the "Equal Opportunity is the Law" notice/poster to the State's recipients, including the LWDBs who shall be responsible for meeting the notice requirement with respect to a State's service providers.

4. Publications, broadcasts, and other communications

Recipients must indicate that the WIOA Title I-financially assisted program or activity in question is an "equal opportunity employer/program," and that "auxiliary aids and services are available upon request to individuals with disabilities," in recruitment brochures and other materials that are ordinarily distributed or communicated in written and/or oral form, electronically and/or on paper, to staff, clients, or the public at large, to describe programs financially assisted under Title I of the WIOA or the requirements for participation by recipients and participants.

Where such materials indicate that the recipient may be reached by voice telephone, the materials must also prominently provide the telephone number of the text telephone (TTY) or equally effective telecommunications system, such as a relay service, videophone, or captioned telephone used by the recipient.

Recipients that publish or broadcast program information in the news media must ensure that such publications and broadcasts state that the WIOA Title I- financially assisted program or activity in question is an equal opportunity employer/program (or otherwise indicate that discrimination in the WIOA Title I- financially assisted program or activity is prohibited by Federal law), and indicate that auxiliary aids and services are available upon request to individuals with disabilities.

Recipients must take appropriate steps to ensure that communications with individuals with disabilities are as effective as communications with others and that the Equal Opportunity notice is provided in appropriate languages to ensure meaningful access for LEP individuals. The DLIR website and documents contain the tag line: "Equal Opportunity Employer/Program Auxiliary aids and services are available upon request to individuals with disabilities" (*Exhibit C*). Each DLIR program also has a TDD/TTY telephone number to assist those with disabilities.

The following policies help ensure that all individuals with disabilities have communication access to programs, services, or activities of the State of Hawaii which are equally effective as that provided to individuals without disabilities:

- DHRD Policy No. 601.002 – Reasonable Accommodations for Employees and Applicants with Disabilities (*Exhibit D*)
- DHRD Policy No. 601.002 Discrimination/Harassment-Free Workplace Policy (*Exhibit E*)

- Governor’s Administrative Directive No. 13-1 Equal Employment Opportunity Program (*Exhibit F*)
- Governor’s Administrative Directive No. 12-6 Accessibility to State Government by Persons with Disabilities (*Exhibit G*)
- Comptroller’s Memorandum 2010-28 Policy Guidance on Website Accessibility (*Exhibit H*)
- Disability and Communication Access Board Americans with Disabilities Act (ADA) Curriculum for State and County Entities (*Exhibit I*)
- DLIR Addendum to State of Hawaii Department of Human Resources Development Discrimination/Harassment-Free Workplace Policy (*Exhibit J*)

Recipients have been instructed, in State of Hawaii WIOA Bulletin No. 12-16, of their responsibilities regarding Equal Opportunity notifications and the local area complaint procedures (*Exhibit K*). Confirmation that recipients are in compliance with these requirements will also be verified during annual self-evaluations and on-site reviews.

In addition, the DLIR has developed the Limited English Proficiency Plan (*Exhibit L*) so its divisions, offices and recipients may use as guidance to fulfill the requirements of providing meaningful access to LEP persons. All program information shall be available in alternative formats upon request from individuals with disabilities, or in languages other than English, within the bounds established for reasonable accommodation. If providing reasonable modification or accommodation would result in undue hardship or fundamentally alter the program or activity, the recipient must notify the State-Level Equal Opportunity Officer and beneficiary in writing of the reasons for refusing to provide accommodation/modification.

5. **Communication of notice in orientations**

During each presentation to orient new participants, new employees, and/or the general public to its WIOA Title-I financially assisted program or activity, in person or over the internet or using other technology, the DLIR and recipients discuss rights and responsibilities under the nondiscrimination and equal opportunity provisions of the WIOA, including the right to file a complaint of discrimination with the CRC or an EO Officer. The DLIR and recipients communicate this information in appropriate languages as required in 29 C.F.R. § 38.39 and in formats accessible for individuals with disabilities as required in this part, as specified in 29 C.F.R. § 38.15, and in compliance with the State of Hawaii policies mentioned above.

6. **Affirmative outreach**

Recipients must take appropriate steps to ensure that they are providing equal access to their WIOA Title I-financially assisted programs and activities. The DLIR and recipients advertise their programs and activities through media releases, which are available on its websites, and by engaging with leaders and programs in various target populations, such as individuals with LEP, at community events and conferences. The

DLIR and recipients also consult with appropriate community leaders and state officers to continue to efforts to serve and reach out to the various target populations.

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 "Equal Opportunity is the Law" Poster
- Exhibit B Notice and Acknowledgment Form
- Exhibit C Other Means of Notification Samples
- C-1 DLIR Press Release Sample
- C-2 DLIR Director's Memo Template
- C-3 Snapshot of Notice Appearing on all DLIR Webpages
- Exhibit D DHRD Policy No. 601.002 – Reasonable Accommodations for Employees and Applicants with Disabilities
- Exhibit E DHRD Policy No. 601.001 Discrimination/Harassment-Free Workplace Policy
- Exhibit F Governor's Administrative Directive No. 13-1 Equal Employment Opportunity Program Governor's Administrative Directive No. 12-6 Accessibility to State Government by Persons with Disabilities
- Exhibit G Governor's Administrative Directive No. 12-6 Accessibility to State Government by Persons with Disabilities Comptroller's Memorandum 2010-28 Policy Guidance on Website Accessibility
- Exhibit H Comptroller's Memorandum 2010-28 Policy Guidance on Website Accessibility
- Exhibit I Disability and Communication Access Board Americans with Disabilities Act (ADA) Curriculum for State and County Entities
- Exhibit J DLIR Addendum to State of Hawaii Department of Human Resources Development Discrimination/Harassment-Free Workplace Policy
- Exhibit K State of Hawaii WIOA Bulletin No. 1-16
- Exhibit L Department of Labor and Industrial Relations Language Access Plan



STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
Workforce Innovation and Opportunity Act Nondiscrimination Plan
Element Four – Data and Information Collection and Maintenance
(29 C.F.R. §§ 38.41 to 38.45)

POLICY

As the State agency with the primary responsibility for carrying out the provisions of the WIOA, the DLIR is committed to ensuring that all recipients are aware of their obligations for data and information collection management.

Recipients must collect data and maintain records in the procedures proscribed by the Director to show that they have complied with the nondiscrimination and equal opportunity provisions of WIOA and this part. The system and format in which the records and data are kept must be designed to allow the DLIR and CRC to conduct statistical or other quantifiable data analyses to verify the recipient's compliance with Section 188 of the WIOA and this part.

1. Collection and Maintenance of Equal Opportunity Data and Other Information

The DLIR has developed a standardized record data collection by means of a Virtual One-Stop (VOS) data and information collection system, HireNet Hawaii (*Exhibit A*). HireNet Hawaii complies with the requirements of 29 C.F.R. §§ 38.41 through 38.45, related to data and information collection and maintenance.

Recipients use HireNet Hawaii to collect data and maintain records that can be used to determine whether the recipient has complied or is complying with the nondiscrimination and equal opportunity provisions of the WIOA and this part. The CRC and EO Officers can use the records and data from HireNet Hawaii to conduct statistical or other quantifiable data analyses to verify recipients' compliance with Section 188 of WIOA and this part.

Recipients are required to collect data and maintain records on applicants, registrants, eligible applicants/registrants, participants, terminees, employees, and applicants for employment. Recipients must also record the following for every applicant, registrant, participant, terminee, applicant for employment, and employee:

- Race/ethnicity, using designations approved by the Office of Management and Budget (OMB) (*Exhibit B*);
- Sex;
- Age;
- Disability status, if known; and
- Limited English proficiency (LEP) and preferred language.

Recipients must collect any medical or disability-related information on separate forms. All such information, whether in hard copy, electronic, or both, must be maintained in one or more separate files, apart from any other information about the individual, and treated as confidential. Whether these files are electronic or hard copy, they must be locked or otherwise secured (for example, through password protection).

Persons in the following categories may be informed about an individual's disability or medical condition and have access to the information in related files under the following listed circumstances:

- (a) Program staff who are responsible for documenting eligibility, where disability is an eligibility criterion for a program or activity.
- (b) First aid and safety personnel who need access to underlying documentation related to a participant's medical condition in an emergency.
- (c) Government officials engaged in enforcing this part, any other laws administered by the Department, or any other Federal laws.

Supervisors, managers, and other necessary personnel may be informed regarding restrictions on the activities of individuals with disabilities and regarding reasonable accommodations for such individuals.

Recipients must also maintain and submit to the CRC upon request a complaint log filed with the recipient that allege discrimination on the following grounds (*Exhibit C*):

- Race Race/ethnicity, using designations approved by the OMB;
- Color;
- Religion;
- Sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity);
- National Origin;
- Age;
- Disability;
- Political affiliation or belief;
- Citizenship; and/or
- Participation in a WIOA Title-I financially assisted program or activity.

The complaint recorded in the complaint log shall include the following information:

1. Name and address of complainant;
2. Ground or basis of complaint;
3. Description of the complaint;
4. Date the complaint was filed;
5. Disposition of complaint and date of issuance; and
6. Any other pertinent information.

Information that could lead to identification of a particular individual as having filed a complaint must be kept confidential. Where designation of individuals by race or ethnicity is required, the guidelines of the OMB must be used.

A copy of the complaint log shall be maintained by the Local-Level EO Officer and forwarded to the State-Level EO Officer annually so that the State-Level EO Officer can maintain a record of all complaints along with all elements required.

Complaint logs, and actions taken regarding the complaints, must be maintained for three (3) years from the date of the resolution of the complaint. Complaints shall be processed in the manner prescribed in Element 8 of this document (*Exhibit A*).

2. Information to be provided to the CRC by grant applicants and recipients

Each grant applicant and recipient is required to promptly notify the CRC Director and State-Level EO Officer when any administrative enforcement actions or lawsuits are filed against it alleging discrimination on the grounds of race, color, religion, sex (including pregnancy, childbirth or related medical conditions, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, political affiliation or belief, and for applicants, participants, and beneficiaries only, on the basis of citizenship or participation in a WIOA Title I-financially assisted program or activity. This notification must include:

1. The names of the parties to the action or lawsuit;
2. The forum in which each case was filed; and
3. The relevant case numbers.

Each recipient, as a part of a compliance review conducted under 29 C.F.R. § 38.63 or monitoring activity carried out under 29 C.F.R. § 38.65 must provide the following information:

- (b) The name of any other Federal agency that conducted a civil rights compliance review or complaint investigation, and that found the grant application or recipient to be in noncompliance, during the two years before the grant application was filled or CRC began its examination; and
- (c) Information about any administrative enforcement actions or lawsuits that alleged discrimination on any protected basis, and that were filed against the grant applicant or recipient during the two years before the application or renewal application, compliance review, or monitoring activity. This information must include:
 1. The names of the parties;
 2. The forum in which each case was filed; and
 3. The relevant case numbers.

The CRC Director and State-Level EO Officer have discretionary authority to request any information and data necessary from recipients for the purposes of investigating complaints and conducting compliance reviews, and particularized information or periodic reports for the purposes of determining compliance with the nondiscrimination and equal opportunity provisions of WIOA.

3. Required Maintenance of Records by Recipients

Each recipient must maintain the following records, whether they exist in electronic form (including email) or hard copy, for a period of not less than three years from the close of the applicable program year:

- (a) The records of applicants, registrants, eligible applicants/registrants, participants, terminees, employees, and applicants for employment; and
- (b) Such other records as are required under this part or by the CRC Director.

Hard-copy and electronic records related to discrimination complaints or compliance reviews must be maintained for a period of not less than three years from the date of final action related to resolution of the complaint or compliance review.

4. CRC Access to Information and Information Sources

Grant applicants and recipients must permit access by the CRC Director or the State-Level EO Officer during its hours of operations to its premises, employees, and participants for the purposes of conducting complaint investigations, compliance reviews, or monitoring activities associated with the State's development and implementation of the Nondiscrimination Plan, and for inspecting and copying such books, records, accounts, and other materials needed to ascertain compliance and ensure enforcement of the nondiscrimination and equal opportunity provisions of WIOA. Asserting privacy or confidentiality are not bases for withholding information from the CRC.

Whenever any information that the CRC Director or the State-Level EO Officer asks a grant applicant or recipient to provide that is in the exclusive possession of another agency, institution, or person, and that agency, institution, or person fails or refuses to furnish the information upon request, the grant applicant or recipient must certify to the CRC that it has made efforts to obtain the information, and that the agency, institution, or person has failed or refused to provide it. The certification must list the name and address of the agency, institution, or person that has possession of that information and the specific efforts the grant applicant or recipient made to obtain it.

5. Confidentiality Responsibilities of Grant Applicants, Recipients, and the Department

Grant applicants, recipients, and the DLIR must keep confidential to the extent possible, consistent with a fair determination of the issues, the identity of any individual who furnishes information relating to, or assists in, an investigation or a compliance review, including the identity of any individual who files a complaint. An individual whose identity is disclosed must be protected from retaliation.

Access to the electronic data maintained in the HireNet Hawaii system shall be limited to such persons who have legitimate need. Information contained in the HireNet Hawaii system shall be used only for the purposes intended and in compliance with the requirements of 29 C.F.R. §§ 38.41 through 38.45.

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 HireNet Hawaii Web Page
- Exhibit B Sample Data Tables of Program Participants
- Exhibit C State of Hawaii WIOA Equal Opportunity Complaint Procedures and Forms



STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
Workforce Innovation and Opportunity Act Nondiscrimination Plan
Element Five — Affirmative Outreach

(29 C.F.R. § 38.40, (29 C.F.R. §38.54(c)(2)(iv), and (29 C.F.R. §38.54(c)(2)(v))

POLICY

The State and DLIR are committed to equal access to their WIOA Title-I financially assisted programs and activities. 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 all recipients reach out to communities protected by Section 188 of the WIOA.

Recipients must take appropriate steps to ensure that they are providing equal access to their WIOA Title-I financially assisted programs and activities. These steps involve reasonable efforts to include members of the various groups protected by these regulations including but not limited to persons of different sexes, various racial and ethnic/national origin groups, various religions, individuals with limited English proficiency, individuals with disabilities, and individuals in different age groups.

In addition, the DLIR is committed to ensuring that all recipients take appropriate steps to ensure that they are complying with federal disability nondiscrimination laws, including Section 504; Title II of the Americans with Disabilities Act of 1990, as amended, if applicable; WIOA Section 188; and this part with regard to individuals with disabilities. Such efforts may include, but are not limited to the following:

- (a) Advertising the recipient's programs and/or activities in media, such as newspapers or radio programs, that specifically target various populations;
- (b) Sending notices about openings in the recipient's programs and/or activities to schools or community service groups that serve various populations; and
- (c) Consulting with appropriate community service groups about ways in which the recipient may improve its outreach and service to various populations.

Priority of services is determined at the local level based on criteria developed by the Local Workforce Development Boards. When considering "priority of service" in American Job Centers (AJCs) (formerly referred to as One-Stop Career Centers) settings, operators must consider the scope of the program or activity, and the size and concentration of the population that needs services (e.g. information in a language other than English). Based on these considerations, recipients must take reasonable steps to provide services and information.

1. **Demographic Assessment**

Information for the racial, ethnic, and gender populations in Hawaii, as well as data on individuals with disabilities, limited English proficiency (LEP), and different age groups, have been tabulated to assess the need for additional services. Specific data is provided to the local areas to assist in their diversity planning and services development (*Exhibit A-1, Exhibit A-2, and Exhibit B*). The State of Hawaii population data has been updated using the 2010 Census data.

In addition, the DLIR conducts a biannual LEP survey (*Exhibit B*) to project the changing trend of diversity in the LEP population. The data is used to help its agencies expand their community outreach and improve their services in areas that are found to be inaccessible by newly formed and/or developing ethnic groups.

2. **Community Outreach, Local Area Plans & Priority**

The State WIOA Plan (*Exhibit C*) encourages local areas to perform outreach methods to specific target groups, including women, minorities, older individuals, and people with LEP, and persons with disabilities. Upon request, the DLIR can offer assistance to local areas to ensure the outreach and recruitment plans broaden the composition of the applicant, registrant, and participant pools.

HireNet Hawaii is a resource where employers and job seekers can self-register online and is accessible to the public through the internet (*Exhibit D*). Employers can list jobs and seek potential workers while job seekers can search for jobs listed in the database.

The local area grantees (the four counties) are required to identify in their local plans the workforce development needs of the businesses and workers in their local areas and how their needs will be met (*Exhibits E-1 to E-4*). How well the needs of businesses and workers have been met will be measured through the performance outcomes, particularly the customer satisfaction scores for businesses and participants.

3. **LEP Outreach**

The DLIR is subject to Chapter 321C, Hawaii Revised Statutes (formerly Part II of Chapter 371, Hawaii Revised Statutes), known as The Language Access Law. In compliance with this law, the DLIR has adopted a LEP Plan that instructs individuals on how to handle LEP encounters (*Exhibit F*).

4. **AJCs Disability Access**

As the AJCs reach advanced levels of integration with a broad group of agencies, the system will be expected to serve the full range of the population—from early teens to the elderly. Increasing numbers of people with disabilities are expected to enter these centers for employment, training, and educational services.

Each AJC shall have at least one workstation specifically designed for customers with disabilities. These workstations will be equipped with software and hardware tools, and

other equipment that will ensure effective communication and participation in all services, training, and benefits.

5. State and DLIR Initiatives for Individuals with Disabilities

The State has developed policies and procedures to ensure that all recipients meet their obligations not to discriminate on the basis of disability and their responsibility to provide both structural and programmatic reasonable accommodations. Ongoing training and monitoring ensures that all recipients continue to meet their obligation not to discriminate (Samples in *Exhibits H-1 and H-2*).

The State has adopted the Americans with Disability Act Accessibility Guidelines (ADAAG) for use by State agencies in providing access to persons with disabilities. A "Disability Access to Programs and Services Manual," which is distributed to all departments and agencies of the state, provides specific guidelines and procedures on accessibility to programs and services (*Exhibit I*). DLIR has updated and distributed to its agencies all policies, including policy statements for persons with disabilities (*Exhibits J-1 and J-2*).

Recipients are required to provide reasonable accommodation to employees and participants, and to ensure that all programs and activities are accessible to persons with disabilities. Regular compliance monitoring by the State-Level and Local-Level EO Officers will further ensure equal opportunity for the disabled. In addition, the ADA Coordinators of the four counties assure that persons with disabilities needs are met in the most appropriate, customer friendly, cost-efficient, and timely manner possible within their county jurisdiction.

Recipient agencies shall conduct programmatic and architectural accessibility compliance site reviews for their own and sub-recipient sites at least once every two years. Training of recipient and sub-recipient staff shall be provided on an on-going basis (*Exhibit K*). All recipients are expected to provide reasonable accommodation of policies, practices, and procedures to comply with Section 504 as described at 29 C.F.R. § 38.12, and to establish and maintain a schedule for regular evaluation of job qualifications to ensure qualifications are not discriminatory on the basis of disability. Local-Level EO Officers shall review job announcements (employee recruitments), job descriptions, position description questionnaires, and other job recruitment materials to ensure that they are non-discriminatory against persons with disabilities.

All recipients shall ensure that individuals with disabilities participate in the most integrated setting appropriate to each individual. Program facilities will be equipped to accommodate individuals with physical disabilities, as well as hearing and vision impaired, to provide universal access to all customers.

Generally, recipients shall modify their policies, practices, or procedures to permit the use of a service animal by an individual with a disability.

Recipients must take appropriate steps to ensure that communications with individuals with disabilities are as effective as communications with persons without disabilities. Recipients must:

- Provide appropriate auxiliary aids or services where necessary to give people with disabilities an equal opportunity to participate in or benefit from a particular program or activity,
- Utilize telecommunications devices for individuals with hearing impairments (TDD/TTY), or equally effective communications systems, such as telephone relay services,
- Ensure that interested individuals, including individuals with visual or hearing impairments, can obtain information as to the existence and location of accessible services, activities, and facilities, and,
- Have signage at a primary entrance to each of its inaccessible facilities, directing users to a location at which they can obtain information about accessible facilities.

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-1 Labor Force Information by Sex and Race, 2015
- Exhibit A-2 Hawaii Disability Statistics
- Exhibit B DLIR LEP Statistics
- Exhibit C Hawaii WIOA Unified State Plan (Approved Final 2018)
- Exhibit D HireNet Webpage
- Exhibit E-1 Oahu Local Area Plan
- Exhibit E-2 Hawaii County Area Plan
- Exhibit E-3 County of Maui Area Plan
- Exhibit E-4 Kauai County Area Plan
- Exhibit F DLIR Language Access Plan
- Exhibit G One-Stop Disability Access Checklist (Electronic Technology)
- Exhibit H-1 Sample of Ongoing Disability Training—Disability Employment Initiative
- Exhibit H-2 Sample of Ongoing Disability Training—Hawaii’s Disability Core State Leadership Team Training
- Exhibit I Programs and Services Manual for Persons with Disabilities
- Exhibit J-1 DHRD Policy No. 601.002 - Reasonable Accommodations for Employees and Applicants with Disabilities
- Exhibit J-2 DHRD Policy No. 601.001 - Discrimination/Harassment-Free Workplace Policy
- Exhibit K Department of Health Disability Communication Access Board ADA Curriculum for State and County Government Entities



**STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
Workforce Innovation and Opportunity Act Nondiscrimination Plan
Element Six – Governor’s Oversight Responsibility Regarding Recipients’
Recordkeeping**

(29 C.F.R. § 38.53)

POLICY

The Governor of the State of Hawaii (Governor) designated the DLIR Director as the designee for implementation of the equal opportunity and nondiscrimination provisions of the WIOA, including designating the State-Level EO Officer. The DLIR Director designated the State-Level EO Officer to oversee the equal opportunity and nondiscrimination responsibilities of the WIOA. The DLIR is committed to ensuring that all recipients fulfill their recordkeeping obligations.

The DLIR will ensure that recipients collect data and maintain records in a manner consistent with the procedures prescribed by the CRC Director under 29 C.F.R. § 38.41. The system and format in which the records and data are kept must be designed to allow the CRC Director and State-Level EO Officer to conduct statistical or other quantifiable data analyses to verify the recipients’ compliance with Section 188 of WIOA. Element Eight contains a full and detailed explanation of how the Governor carries out the required oversight and monitoring responsibilities.

**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**



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.

each such issue, a statement whether the recipient will accept or reject the issue for investigation and the reasons for each rejection."

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



STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
Workforce Innovation and Opportunity Act Nondiscrimination Plan

Element Eight – Governor’s Oversight and Monitoring Responsibilities for State Programs
(29 C.F.R. §§38.51 to 38.53, 29 C.F.R. § 38.54(c)(2)(viii)(A), and 29 C.F.R.
§ 38.54(c)(2)(viii)(B))

POLICY

The Governor designated the DLIR Director as the designee for implementation of the equal opportunity and nondiscrimination provisions of the WIOA, including designating the State-Level EO Officer. The DLIR Director designated the State-Level EO Officer to oversee the equal opportunity and nondiscrimination responsibilities of the WIOA. The DLIR is committed to ensuring that all recipients fulfill their recordkeeping obligations.

At the Local Level Area, each of the four county mayors are designated the local grant administrator for their county. The mayors appoint their respective Local- Level EO Officer.

1 Governor’s Oversight & Monitoring Responsibilities for State Programs

The DLIR will assist the Governor in overseeing and monitoring all WIOA Title I-financially assisted State Programs to ensure all follow the equal opportunity and nondiscrimination provisions of the WIOA. Each of the LWDA Directors and the Local-Level EO Officers shall oversee and monitor programs 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 subrecipients in their county on an annual basis. Each EO monitoring review shall include:

1. A statistical or other quantifiable analysis of records and data kept by the recipient under 29 C.F.R. § 38.41, including analyses by race/ethnicity, sex, limited English proficiency, preferred language, age, and disability status (*Exhibit A* and *Exhibit B*) as follows:
 - a) Conduct analyses by race/ethnicity, sex, age, and disability status of program and employment activity:
 1. Does the analysis include rates of application, placement, and termination?

- Does the analysis include the "Practical Significance or 80% Rule?"
- b) Conduct follow-up monitoring to determine the cause of any such differences in service access found by the prior analyses:
1. How does the recipient conduct follow-up investigations to determine the cause of any differences?
 2. Has the recipient discovered any such differences?
 3. If so, what corrective actions and/or sanctions were instituted?
2. An investigation of any significant differences identified in paragraph (1) of this section in participation in the programs, activities, or employment provided by the recipient, to determine whether these differences appear to be caused by discrimination. This investigation must be conducted through review of the recipient's records any other appropriate means (*Exhibits C through E*), and:
- a) Conducting equal opportunity monitoring and evaluation reviews:
- Does the recipient have a schedule for monitoring?
 - Does the recipient have a form/checklist for monitoring?
 - What tools does the recipient use to assess architectural assembly?
- b) Imposing sanctions and corrective actions for violations:
- How does the recipient provide notification of sanction or corrective actions?
 - How does the recipient follow up on sanctions and corrective actions notification?
 - How does the recipient address failure to correct the violation?
- c) Ensuring policy development, communication, and training are carried out:
- What is the recipient's method of policy development and how does it provide for nondiscriminatory content?
 - Does the recipient communicate in a nondiscriminatory manner?
 - Does the recipient have a schedule of training on EO matters?
 - Is the content of the training adequate?
3. An assessment to determine whether the recipient has fulfilled its administrative obligations under Section 188 of WIOA or this part (for example, recordkeeping, notice and communication) and any duties assigned to it under the Nondiscrimination Plan (*Exhibit F*). The assessment shall include the following:
- a. Assurances
- Has the recipient provided the written assurance required under §38.25?
 - Is the assurance incorporated into all agreements, including county contracts, entered regarding the operation of the WIOA Title I funded activity?
 - Is the recipient aware of how long the obligation under the assurance will last?
 - Is the recipient aware of the breadth of coverage of the obligation?
 - In cases where WIOA Title I funding is in the form of real property, structures, or interest in real property structures, does the instrument conveying the transfer contain the assurance?

b. EO Officers

- Has the recipient designated an EO Officer, or point of contact?
- Does the appointed EO Officer meet the eligibility requirements under §38.30?
- Has the recipient listed, in writing, the responsibilities of the EO Officer, including but not limited to those listed under §38.31?
- Has the recipient fulfilled its obligations relating to the EO Officer under §38.29?
- If the recipient is a small recipient as defined under §38.4, has the recipient fulfilled its obligations under §38.32?

c. Notice and Communication

- Is the recipient aware of its obligation under §38.34 to disseminate its equal opportunity policy?
- When notice is provided of the recipient's EO obligations, does the notice contain the specific wording required in §38.35?
- Has the recipient's notification been published in the areas specified in §38.36(a)(1) through §38.36(a)(4)?
- Was notice supplied promptly as needed in §38.36(d)?
- Is the recipient in compliance with §38.34 regarding "tag lines" and TDD/TTY information?
- Is the recipient in compliance with §38.38 on the publication and broadcast of program information?

d. Data and Information Collection and Maintenance

- Does the recipient collect and maintain the data elements needed under §38.41(b)(1) through §38.41(b)(3)?
- Does the recipient maintain a log of complaints alleging discrimination as required under §38.41(c)?
- Is necessary medical or disability-related information collected on separate forms and kept in separate files?
- Has the recipient notified the CRC and the State-Level EO Officer of any administrative enforcement actions or lawsuits filed against it alleging discrimination?
- Does the recipient keep records for the length specified under §38.43?
- Does the recipient have in place a system adequate to assure the confidentiality of records under §38.45?

e. Affirmative Outreach

- Has the recipient taken adequate steps to ensure equal access to the services and programs supplied as needed under §38.40?

f. Complaint Processing Procedures

- Has the recipient developed, implemented, and distributed complaint procedures as needed under §38.69 through §38.85?
- Does the complaint procedure have all elements required under §38.72?

2 Governor's Liability for Actions of Recipients the Governor Has Financially Assisted under Title I of WIOA

The Governor and the DLIR are jointly and severally liable for all violations of the nondiscrimination and equal opportunity provisions of WIOA and this part by the recipient, unless the Governor has:

1. Established and implemented a Nondiscrimination Plan under § 38.54, designed to give a reasonable guidance of the recipient's compliance with such provisions:
 - The DLIR has set up and implemented a Nondiscrimination Plan that recipients may look to for guidance. The DLIR's Nondiscrimination Plan is also available on the DLIR website.
2. Entered into a written contract with the recipient that clearly establishes the recipient's obligations regarding nondiscrimination and equal opportunity:
 - The DLIR has entered into written contracts with recipients that clearly establish their obligations regarding nondiscrimination and equal opportunity (*Exhibit A*).
3. Acted with due diligence to monitor the recipient's compliance with these provisions:
 - Please see the above monitoring procedures, and:
4. Taken prompt and proper corrective action to effect compliance.
 - Please see the above monitoring procedures.

3 Governor's Oversight Responsibilities Regarding Recipients' Recordkeeping

The DLIR will ensure that recipients collect data and maintain records in a manner consistent with the procedures prescribed by the Director of the CRC (Director) under 29 C.F.R. § 38.41. The system and format in which the records and data are kept must be designed to allow the Director and State-Level EO Officer to conduct statistical or other quantifiable data analyses to verify the recipients' compliance with Section 188 of WIOA. The data collection and records maintenance procedure is described above and in detail below:

1. Data and Information Collection and Maintenance
 - Does the recipient collect and maintain the data elements required under §38.41(b)(1) through §38.41(b)(3)?
 - Does the recipient maintain a log of complaints alleging discrimination as required under §38.41(c)?
 - Is necessary medical or disability-related information collected on separate forms and maintained in separate files?
 - Has the recipient notified the CRC and the State-Level EO Officer of any administrative enforcement actions or lawsuits filed against it alleging discrimination?

- Does the recipient keep records for the length specified under §38.43?
- Does the recipient have in place a system adequate to assure the confidentiality of records under §38.45?

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 *Participant File Review Worksheet
- Exhibit B *Adverse Impact and the 80% Rule
- Exhibit C *Entrance Meeting – Entrance Conference Form
- Exhibit D *Exit Conference Form
- Exhibit E *Monitoring Report Form
- Exhibit F *Monitoring Review Instrument

* Forms have been duplicated from the *"Guide to Conducting Equal Opportunity Monitoring Reviews,"* NASWA