



DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

Workforce Innovation and Opportunity Act Nondiscrimination Plan

Element 8 – Governor’s Oversight & Monitoring Responsibilities for State Programs

(29 C.F.R. §§38.51 to 38.53)

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. Local-Level EO Officers oversee and monitor Title I programs and activities of the Local Workforce Development Area (LWDA) and its contracted service providers in their respective areas and report to the State-Level EO Officer. The State-Level EO Officer reviews local actions during the annual on-site coordinated monitoring visit.

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. Each of the Local Workforce Development Area (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:
 - 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:
 - How does the recipient conduct follow-up investigations to determine the cause of any differences?
 - Has the recipient discovered any such differences?

- 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:
 - 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 recipient 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:

- Recipients shall use this Nondiscrimination Plan as guidance for conforming to Section 188 of the WIOA and 29 C.F.R. Part 38. The DLIR's Nondiscrimination Plan is available on the DLIR website at: <https://labor.hawaii.gov/wioa-eo/>
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 written contracts with recipients that clearly establish their obligations regarding nondiscrimination and equal opportunity.
 3. Acted with due diligence to monitor the recipient's compliance with these provisions:
 - Refer to the monitoring procedures contained in this Element and Nondiscrimination Plan
 4. Taken prompt and proper corrective action to effect compliance.
 - Refer to the monitoring procedures contained in this Element and Nondiscrimination Plan

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 Civil Rights Center (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:

- 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 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

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 as well as 29 C.F.R. Part 38 responsibilities to determine whether discrimination is occurring. The monitoring review shall include analysis of data and records collected by the recipient and/or sub-recipient, pursuant to 29 C.F.R. 38.41, to determine whether a difference in service access based 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.

Equal Opportunity Employer/Program

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

TDD/TTY: Dial 711 then ask for (808) 586-8842

EXHIBITS

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