

JOSH GREEN, M.D.
GOVERNOR

SYLVIA LUKE
LIEUTENANT GOVERNOR



JADE T. BUTAY
DIRECTOR

WILLIAM G. KUNSTMAN
DEPUTY DIRECTOR

STATE OF HAWAII
KA MOKU'ĀINA O HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
KA 'OIHANA PONO LIMAHANA
830 PUNCHBOWL STREET, ROOM 321
HONOLULU, HAWAII 96813
www.labor.hawaii.gov

WIOA NDP Bulletin No. 24-01

DATE: July 5, 2024

TO: Workforce Innovation and Opportunity Act Recipients

FROM: David Rodriguez, State-Level EO Officer
Department of Labor and Industrial Relations (DLIR)

SUBJECT: Nondiscrimination Plan and Equal Opportunity Procedures

PURPOSE

This policy provides the guidance and establishes the procedures regarding nondiscrimination and equal opportunity procedures pursuant to the Workforce Innovation and Opportunity Act (WIOA), Section 188, and its implementing regulations found at 29 CFR Part 38 "Implementation of the Nondiscrimination and Equal Opportunity Provisions of the Workforce Innovation and Opportunity Act".

The purpose of this bulletin is to provide notice of the revised State of Hawaii Workforce Innovation and Opportunity Act Nondiscrimination Plan that includes revised posters, notices, complaint forms and other substantive changes. This bulletin supersedes all previous bulletins including WIOA Bulletin No. 1-17, WIOA Bulletin No. 02-17, WIOA Bulletin No. 02-17, Change 1, and WIOA NDP Bulletin No. 1-19.

The revised Nondiscrimination Plan and revised documents are available at:

<https://labor.hawaii.gov/wioa-eo/>.

BACKGROUND

Section 188 of the WIOA prohibits discrimination on the grounds of race, color, religion, sex (including pregnancy, childbirth or related medical conditions, gender identity, and transgender status), national origin, (including limited English proficiency), disability, political affiliation, or belief, and for beneficiaries only, citizenship or participation in a WIOA Title-1 financial assisted program or activity.

The equal opportunity procedures in this bulletin apply to any recipient, as defined in 29 C.F.R. §38.4. The term "recipient" means:

Any entity to which financial assistance under WIOA Title I is extended, either directly from the Department or through the Governor or another recipient (including any successor, assignee, or transferee of a recipient), but excluding the ultimate beneficiaries of the WIOA Title I-funded program or activity. In instances in which a Governor operates a program or activity, either directly or through a State agency, using discretionary funds apportioned to him or her under WIOA Title I (rather than disbursing the funds to another recipient), the Governor is also a recipient. In addition, for purposes of this part, One-Stop partners, as defined in section 121(b) of WIOA, are treated as "recipients," and are subject to the nondiscrimination and equal opportunity requirements of this part, to the extent that they participate in the One-Stop delivery system. "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; (DLIR)
2. State Workforce Agencies;
3. State and Local Workforce Development Boards;
4. Local Workforce Development Area (LWDA) grant recipients;
5. One-Stop operators;
6. Service providers, including eligible training providers;
7. On-the-Job Training (OJT) employers;
8. Outreach and admissions agencies;
9. Placement agencies;
10. Other National Program recipients

POLICY

29 C.F.R. § 38.54 requires each Governor to establish and implement a Nondiscrimination Plan for State programs.

29 C.F.R. §§ 38.25 to 38.27, in part, requires that grant applicant assures that it has the ability to comply with the nondiscrimination and equal opportunity provisions of Section 188 of the WIOA, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, Age Discrimination Act of 1975, and Title IX of the Education Amendments of 1972.

29 C.F.R. §§ 38.28 to 38.33, in part, requires the designation of Equal Opportunity Officers (EO Officer) by the State of Hawaii and counties. The EO Officers are responsible for monitoring and investigating recipients' activities, processing discrimination complaints, and undergoing training at the recipient's expense to maintain competency.

29 C.F.R. §§ 38.34 to 38.40, in part, requires the State, Counties, and other recipients, except small recipients, to provide initial and continuing notice that they do not discriminate on any prohibited ground to registrants, applicants, eligible

applicants/registrants, participants, applicants for employment, employees, unions, subrecipients that receive WIOA Title I-financial assistance, and members of the public.

29 C.F.R. § 38.51 requires annual monitoring of recipients for the compliance with WIOA Section 188 to determine whether each recipient is conducting its WIOA Title I-financially assisted program or activity in a nondiscriminatory way. Annual monitoring review must include the following: (1) statistical or other quantifiable analysis of records and data kept by the recipient, including analyses by race/ethnicity, sex, limited English proficiency, preferred language, age, and disability status; (2) an investigation of any significant differences in participation in the programs, activities, or employment provided by the recipient to determine whether these differences appear to be caused by discrimination; and (3) an assessment to determine whether the recipient has fulfilled its administrative obligations under Section 188 of WIOA and any duties assigned under the Nondiscrimination Plan.

29 C.F.R. § 38.36 requires recipients to post the Equal Opportunity Notice (sometimes referred to as the Equal Opportunity is the Law poster) prominently in reasonable numbers and places in conspicuous physical locations as well as provide the Notice to employees and participants and kept as part of their files.

29 C.F.R. § 38.38 requires that all recipients indicate that WIOA Title I-financially assisted programs or activities are an “equal opportunity employer/program” and that “auxiliary aids and services are available upon request to individuals with disabilities” in materials that are ordinarily distributed or communicated in written or oral form. In addition, such materials must indicate that the recipient may be reached by voice telephone and must provide a telephone number used by the recipient.

29 C.F.R. §§ 38.69 to 38.85 allows any person or specific class of individuals who have been or being discriminated against on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, political affiliation or belief, citizenship status, or participation in any WIOA Title I-financially assisted program or activity to file a written complaint within 180 days of the alleged discrimination or retaliation.

EQUAL OPPORTUNITY OFFICERS

Governor Josh Green, M.D., designated DLIR Director Jade T. Butay as the designee for the implementation of the nondiscrimination and equal opportunity provisions of the WIOA and Director Butay designated David J. Rodriguez as the State-Level EO Officer.

The State-Level EO Officer is responsible for conducting the annual monitoring of recipients, including, but not limited to:

- Overseeing the development and implementation of the state’s Nondiscrimination Plan,
- Serving as the state’s liaison with Civil Rights Center of the U.S. DOL,

- Monitoring compliance of WIOA Title I equal opportunity and nondiscrimination requirements,
- Reviewing the recipient's written policies to make sure that those policies are nondiscriminatory,
- Conducting outreach and education about equal opportunity and nondiscrimination requirements and how an individual may file a complaint,
- Undergoing training and providing training and technical assistance to Local-Level EO Officers, and
- Developing procedure for and investigating discrimination matters that rise to the state level.

The Local-Level EO Officer is responsible for monitoring compliance of local area WIOA Title 1 recipients, including, but not limited to:

- Reporting EO/Nondiscrimination matters to the State-Level EO Officer,
- Processing and investigating local area discrimination complaints,
- Surveying One-Stop Centers to ensure compliance with applicable accessibility requirements,
- Conducting outreach and education about EO and nondiscrimination requirements and how an individual may file a complaint,
- Ensuring overall implementation of the WIOA Nondiscrimination Plan in the Local Area.

The Mayors are responsible to ensure the Counties and their service and training providers, On-the-Job Training employers, and other subrecipients comply with these updated procedures. Local grant recipients and their subrecipients must follow the equal opportunity notice and complaint procedures provided in this bulletin. Please note that all recipients must offer Alternative Dispute Resolution (ADR) to any person eligible to file a complaint under the WIOA.

PROCEDURES

NOTICE AND COMMUNICATION

The nondiscrimination and equal opportunity provisions of the WIOA require that **all recipients**, including the Counties, their subrecipients, and training providers must post the Equal Opportunity is the Law notice (Attachment A) (The DLIR has a department specific notice). All recipients must:

1. Post a notice prominently, in reasonable numbers and places, in available and conspicuous physical locations and on the recipient's website pages,
2. Disseminate the notice in internal memoranda and other written or electronic communications with staff,
3. Include the notice in employee and participant handbooks or manuals regardless of form, including electronic and paper form if both are available,
4. Provide the notice to each participant and employee; the signed notice

must be made part of each employee's and participant's file (Attachments A & B). It must be a part of both paper and electronic files, if both are maintained, and

5. Provide in appropriate formats for the visually impaired and record of such alternate format in participant or employee file.

EQUAL OPPORTUNITY TAGLINE AND RELAY SERVICE

All WIOA Partners must have the required WIOA tagline on all materials that are ordinarily distributed or communicated in written or form, electronically and/or on paper, to staff, clients, or the public at large. This includes websites and webpages. Partners must ensure that recruitment brochures and other public materials contain the following statements:

"Equal Opportunity Employer/Program;" and, "Auxiliary aids and services are available upon request to individuals with disabilities," along with a TDD/TTY number pursuant to 29 C.F.R. §38.38.

COMPLAINT PROCESSING PROCEDURES

All recipients must comply with the State of Hawaii WIOA Equal Opportunity Complaint Procedures and Forms if filed with the State-Level or Local-Level EO Officers, which is available at <https://labor.hawaii.gov/wioa-eo/>. Complaints may be filed with the Local-Level EO Officer of the county that the alleged discrimination or retaliation occurred in, State-Level EO Officer, or alternatively with the United States Department of Labor Civil Rights Center.

INQUIRIES

Questions regarding this bulletin should be directed to David J. Rodriguez at (808) 586-8855, or TDD/TTY Dial 711 then ask for (808) 586-8866, or by email to david.j.rodriguez@hawaii.gov.



DAVID J. RODRIGUEZ
State-Level EO Officer

Cc: Mayor Derek S.K. Kawakami, County of Kauai
Mayor Mitchell D. Roth, County of Hawaii
Mayor Rick Blangiardi, City and County of Honolulu
Mayor Richard Bissen, County of Maui
WIOA Title 1 Recipients

EQUAL OPPORTUNITY IS THE LAW

It is against the law for this recipient of Federal financial assistance to discriminate on the following bases: Against any individual in the United States, on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, sex stereotyping, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, or political affiliation or belief, or against any beneficiary of, applicant to, or participant in programs financially assisted under Title I of the Workforce Innovation and Opportunity Act, on the basis of the individual's citizenship status or participation in any WIOA Title I-financially assisted program or activity.

The recipient must not discriminate in any of the following areas: Deciding who will be admitted, or have access, to any WIOA Title I-financially assisted program or activity; providing opportunities in, or treating any person with regard to, such a program or activity; or making employment decisions in the administration of, or in connection with, such a program or activity.

Recipients of federal financial assistance must take reasonable steps to ensure that communications with individuals with disabilities are as effective as communications with others. This means that, upon request and at no cost to the individual, recipients are required to provide appropriate auxiliary aids and services to qualified individuals with disabilities.

What To Do If You Believe You Have Experienced Discrimination

If you think that you have been subjected to discrimination under a WIOA Title I-financially assisted program or activity, you may file a complaint within 180 days from the date of the alleged violation with either:

The recipient's Equal Opportunity Officer (or the person whom the recipient has designated for this purpose); or

The Director, Civil Rights Center (CRC), U.S. Department of Labor, 200 Constitution Avenue NW., Room N-4123, Washington, DC 20210 or electronically as directed on the CRC Web site at www.dol.gov/crc.

If you file your complaint with the recipient, you must wait either until the recipient issues a written Notice of Final Action, or until 90 days have passed (whichever is sooner), before filing with the Civil Rights Center (see address above).

If the recipient does not give you a written Notice of Final Action within 90 days of the day on which you filed your complaint, you may file a complaint with CRC before receiving that Notice. However, you must file your CRC complaint within 30 days of the 90-day deadline (in other words, within 120 days after the day on which you filed your complaint with the recipient).

If the recipient does give you a written Notice of Final Action on your complaint, but you are dissatisfied with the decision

or resolution, you may file a complaint with CRC. You must file your CRC complaint within 30 days of the date on which you received the Notice of Final Action.

WIOA applicants, participants, program staff, and employees affected by their respective Workforce Development system in the following counties may file with the persons in their county as follows:

City and County of Honolulu:

Denise L. Tsukayama, CAAP, EO Officer/ADA Coordinator
925 Dillingham Blvd., Suite 180, Honolulu, HI 96817
Phone: (808) 768-8505 Fax: (808) 768-8480
TDD/TTY: Dial 711 then ask for (808)768-8505
E-Mail: dtsukayama@honolulu.gov

County of Maui:

Diana Merantza, Local-Level EO Officer
200 S. High Street, 6th Floor, Wailuku, HI 96793
Phone: (808) 463-3168
TDD/TTY: Dial 711 then ask for (808) 270-6292
E-Mail: diana.m.merantza@co.maui.hi.us

County of Hawaii:

Danny B. Patel, Acting Local-Level EO Officer
101 Pauahi Street, Suite 2, Hilo, HI 96720
Phone: (808) 961-8361 Fax: (808) 961-8617
TDD/TTY: Dial 711 then ask for (808) 961-8819
E-Mail: cohhr@hawaiicounty.gov

County of Kauai:

Kip Cardelli, EEO/ADA Compliance Officer/Investigator
4444 Rice Street, Suite 140, Lihue, HI 96766
Phone: (808) 241-4924 Fax: (808) 241-4924
TDD/TTY: Dial 711 then ask for (808) 241-4924
E-Mail: kcardelli@kauai.gov

Department of Labor and Industrial Relations:

David J. Rodriguez, State-Level EO Officer
830 Punchbowl, Room 321, Honolulu, HI 96813
Phone: (808) 586-8855 Fax: 586-9099
E-Mail: dlir.eeo@hawaii.gov

United States Civil Rights Center:

Director of the Civil Rights Center, U.S. Department of Labor
200 Constitution Avenue, N.W. Room N-4123
Washington D.C. 20210
Phone: (202) 639-6500 Fax: (202) 693-6505
TDD/TTY: Dial 711 then ask for (800) 877-8339
E-Mail: CRCEXternalComplaints@dol.gov

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The recipient must not discriminate in any of the following areas: Deciding who will be admitted, or have access, to any WIOA Title I-financially assisted program or activity; providing opportunities in, or treating any person with regard to, such a program or activity; or making employment decisions in the administration of, or in connection with, such a program or activity.

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Phone: (808) 463-3168
TDD/TTY: Dial 711 then ask for (808) 270-6292
E-Mail: diana.m.merantza@co.maui.hi.us

County of Hawaii:

Danny B. Patel, Acting Local-Level EO Officer
101 Pauahi Street, Suite 2, Hilo, HI 96720
Phone: (808) 961-8361 Fax: (808) 961-8617
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CERTIFICATION

This is to certify that the above information on Equal Opportunity and Non-Discrimination was explained to me and that I have received a copy of this notice.

Print Applicant's Name

Applicant's Signature

Date