


MARICOPA COUNTY  HUMAN SERVICES DEPARTMENT Workforce Development Division	SECTION/REFERENCE P.L. 105-220, Section 188 of the Workforce Investment Act of 1998 and 29 CFR Part 37	PAGE 1 OF 11
	ORIGINAL ISSUE DATE July 2007	REVISION DATE April 2010
	AUTHORIZED BY: Patrick Burkhart, Assistant Director	
SUBJECT: Discrimination Complaint Policy and Procedures		ADDENDA: MWC Discrimination Complaint Form in English and Spanish

Purpose:

This policy outlines the process for WIA participants that have complaints that are discriminatory in nature. The policy provides the procedures required for prompt and equitable resolution when any person or specific class of individuals files a complaint that he/she has been or is being subjected to discrimination. This regulation identifies the grounds or basis upon which a complaint may be filed.

Background:

Recipients of financial assistance under WIA Title I are prohibited from discriminating on the ground of race, color, religion, sex, national origin, age, disability, political affiliation or belief and against beneficiaries on the basis of citizenship/ immigrant status to work in the United States or participation in programs funded under WIA, as amended, in admission or access to, opportunity or treatment in, or employment in the administration of, or in connection with, any WIA funded program or activity. This policy establishes the discrimination complaint processing procedures for the State of Arizona under P.L. 105-220, Section 188 of the Workforce Investment Act of 1998 and the corresponding regulations set forth in 29 CFR Part 37.

Responsibility of:

WIA Participant, Career Guidance Specialist, WIA Program Supervisor, Assistant Director for Workforce Development

WHO MAY FILE: Any person, either by him/herself or through a representative, who believes that either, he/she, or any specific class of individuals has been or is being subjected to discrimination prohibited by the nondiscrimination and equal opportunity provisions of the Workforce Investment Act (WIA), may file a written complaint. The discrimination may be on the basis of, color, religion, sex, national origin, age, disability, political affiliation or belief and against beneficiaries on the basis of citizenship/immigrant status to work in the United States, or participation in programs funded under WIA, or in connection with any WIA funded program or activity.

WHERE TO FILE: The State of Arizona uses a three-level system that allows a complainant to file a Complaint: the local level with the Maricopa Workforce Connections Equal Opportunity (EO) Officer; the state level with the State WIA EO Officer; or at the Federal level with the Director of Civil Rights Center (CRC).

STATE REQUIRED ACTION:

ACTION REQUIRED: Local Workforce Investment Areas, sub-recipients and service providers will follow the procedures set forth in this policy, as well as those listed in 29 CFR Sections 37.70 through 37.80.

Each LWIA Equal Opportunity (EO) Officer will promptly notify both the State WIA EO Officer and the Director of the CRC of any administrative enforcement actions or lawsuits filed against the LWIA alleging discrimination on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief and for beneficiaries only, citizenship or participation in WIA financially assisted program or activity. This notification must include the names of the parties to the action or lawsuit, the forum in which each case was filed and the relevant case numbers. The requirements for the notice are set forth in 29 CFR Section 37.38.

WHEN TO FILE:

Generally, a complaint must be filed within 180 days of the alleged discrimination. However, for good cause shown, the Civil Rights Center (CRC) (Director may extend the filing time. The time period for filing is for the administrative convenience of the Civil Right Center (CRC), and does not create a defense for the respondent.

COMPUTATION OF TIME:

In computing any time period as prescribed by these rules, the first day will be excluded and the last included to complete the period. In addition, the time periods are counted in calendar days, not work days.

DISCRIMINATION COMPLAINT CONTENTS:

Each complaint must be filed in writing, and must contain the following information:

1. Complainant's name and address (or another means of contacting the complainant);
2. Identity of the respondent (the individual or entity that the complainant alleges is responsible for the discrimination);
3. Description of the complainant's allegations. This description must include enough detail to allow the EO Officer or Director of CRC to decide whether:
 - a. WIA jurisdiction over the complaint exists;
 - b. The complaint was filed in time; and
 - c. The complaint has apparent merit; in other words, whether the complainant's allegations, if true, would violate any of the nondiscrimination and equal opportunity provisions of WIA or 29 CFR Part 37; and
4. The complaint has been signed by either the complainant or the complainant's authorized representative.

The complaint may be filed on any form, including the State of Arizona WIA Discrimination Complaint Form (Attachment B), but the contents of the complaint must still contain the requirements listed in this section.

RIGHT OF REPRESENTATION:

Both the complainant and the respondent have the right to be represented by an attorney or other individual of their choice. Each person will bear their own costs of representation.

DISCRIMINATION COMPLAINT PROCESSING PROCEDURES:

All complaints will be date stamped upon receipt, and forwarded to the appropriate EO officer for processing.

1. The EO Officer will provide a written acknowledgment of receipt of the complaint to the complainant within 5 days with notice that the complainant has the right to be represented in the complaint process.

2. Upon receipt of a complaint or information alleging discrimination, the EO Officer will:
 - a. Review the complaint for accuracy and completeness;
 - b. Initiate an investigation or fact-finding of the circumstances underlying the complaint that shall last at least 14 calendar days;
 - c. Provide written notice to all parties of the specific issues raised in the complaint;
 - d. Provide a statement for each issue, either accepting the issue for investigation or rejecting the issue, and the reasons for each rejection;
 - e. Inform all parties of their right to representation by an attorney or other individual of their choice;
 - f. Inform all parties of their right to present evidence;
 - g. Inform all parties of their right to rebut evidence presented by others;
 - h. Provide for a decision made strictly on the documented evidence.

3. The EO Officer will contact the complainant in writing no later than 14 calendar days of receipt of the complaint to determine the complainant's willingness to mediate using the following alternative dispute resolution (ADR) procedures:
 - a. The choice whether to use the ADR or the customary process rests with the complainant;
 - b. 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:
 - i. 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 alleged breach;
 - ii. The CRC Director will evaluate the circumstances to determine whether the agreement has been breached. If he/she determines that the agreement has been breached, the complainant may file a complaint with CRC Director based upon his/her original allegation(s), and the CRC Director may waive the time deadline for filing such a complaint.
 - c. If the parties do not reach an agreement under ADR, the complainant may file a complaint with the CRC Director as described in Section CFR Section 37.71 through 37.74.

4. The EO Officer will provide a written Notice of Final Action to the complainant within 90 days of the date on which the complaint was filed that contains the following information:
 - a. For each issue raised in the complaint, a statement of either:
 - A) The 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
 - b. Notice that the complainant has a right to file a complaint with CRC Director within 30 days of the date on which the Notice of Final Action is issued if he/she is dissatisfied with the recipient's final action on the complaint.

ALTERNATIVE DISPUTE RESOLUTION (ADR)/MEDIATION PROCESS:

During the 90 calendar day period, complainants may elect to participate in mediation. If the complainant selects mediation, it allows disputes to be resolved in a less adversarial manner.

The EO Officer will coordinate with a preapproved mediator. The individual conducting the mediation must be a neutral and impartial third party who will act as a facilitator. The mediator must be a person who is acceptable to all parties including the EO Officer and who will assist the parties in resolving their disputes.

1. If the complainant chooses to participate in mediation, he/she or the authorized representative must respond to the EO Officer in writing within 10 calendar days of the date of the request. This written acceptance must be dated and signed by the complainant or authorized representative and must also include the relief sought.
2. A written confirmation identifying the date, time and location of the initial mediation conference will be sent to all appropriate parties.
3. A consent form will be signed by all parties at the initial mediation conference affirming that the contents of the mediation will be kept confidential.
4. If resolution is reached under ADR/mediation, the agreement will be in writing. A copy of the signed agreement will be sent to the EO Officer.
5. If an agreement is reached under ADR/mediation but a party to the agreement believes his/her agreement has been breached, the non-breaching party may file a complaint with the CRC Director.
6. If the parties do not reach resolution under ADR/mediation, the complainant will be advised of his/her right to file a complaint with the CRC (Civil Rights Center /U.S.DOL (United States Department of Labor; however, the EO Officer will continue with the investigation. The mediation process should be completed within 45 calendar days of receipt of the complaint. This will assist in keeping within the 90 calendar day timeframe of the written Notice of Final Action if the mediation is not successful.

IF NO WIA JURISDICTION OVER A COMPLAINT EXISTS:

Based on information provided by the complainant, the EO Officer may declare that there is no jurisdiction over the complaint for one of more of the following reasons:

1. The basis for the complaint is not covered by the prohibitions of 29 CFR Part 37.
2. The complaint is against an agency, employer, organization, program, or individual within an entity that is not a recipient of WIA Title 1 financial assistance as defined in 29 CFR Part 37.4. The EO Officer will provide contact information of the appropriate agency or agencies which may have jurisdiction over the complaint, if known.
3. A Notice of Lack of Jurisdiction (with one or more of the above reasons) will be provided in writing immediately upon the EO Officer discovering the lack of jurisdiction. This written notice shall also inform the complainant that he/she has the right to file a complaint with CRC within 30 days from the date of receiving the notice.

IF THE EO OFFICER ISSUES A NOTICE OF FINAL ACTION WITH WHICH THE COMPLAINANT IS DISSATISFIED:

If, during the 90 day period, the EO Officer issues its Notice of Final Action, but the complainant is dissatisfied with the decision on the complaint, the complainant or his/her representative may file a complaint with the CRC Director within 30 days after the date on which the complainant receives the Notice of Final Action.

IF THE EO OFFICER FAILS TO ISSUE A NOTICE OF FINAL ACTION WITHIN 90 DAYS OF WHEN COMPLAINT WAS FILED:

If, by the end of 90 days from the date on which the complaint was filed, the EO Officer has failed to issue a Notice of Final Action, the complainant or his/her representative may file a complaint with the CRC Director within 30 days of the expiration of the 90 day period. In other words, the complaint must be filed with the CRC Director within 120 days of the date on which the complaint was filed with the EO Officer.

CONFIDENTIALITY:

The EO Officer is required to keep the following information confidential to the maximum extent possible, consistent with applicable law and fair determination of the complaint:

1. The fact that the complaint has been filed;
2. The identity of the complainant(s);
3. The identity of individual respondents to the allegations; and
4. The identity of any person(s) who furnished information relating to, or assisting in, a complaint investigation or a compliance review will only be released to the extent necessary to investigate and fairly determine the issues raised in the complaint or as otherwise required by law.

CONFIDENTIALITY OF COMPLAINT:

All parties against whom the complaint is filed, will receive a copy of the complaint during the course of the investigation or alternative dispute resolution in order to allow the individual or entity the opportunity to respond to the allegation(s). The name of the complainant will only be released to the extent necessary to investigate and fairly determine the issues raised in the complaint.

INTIMIDATION AND RETALIATION PROHIBITED:

It is prohibited to discharge, intimidate, retaliate, threaten, coerce or discriminate against any person because such person has:

- filed a complaint alleging a violation of WIA or the regulations;
- opposed a practice prohibited by the nondiscrimination and equal opportunity provisions of WIA or the regulations;
- furnished information to, assisted or participated in any manner in, an investigation, review, hearing or any other activity related to administration of, or exercise of authority under, or privilege secured by, the nondiscrimination and equal opportunity provisions of WIA or the regulations; or
- exercised authority under or privileges secured by the nondiscrimination and equal opportunity provisions of WIA or the regulations.

The sanctions and penalties contained in P.L. 105-220 dated August 7, 1998, Section 188(b) of WIA will be imposed against any LWIA that engages in any such retaliation or intimidation, or fails to take appropriate steps to prevent such activity.

DEFINITIONS

29 CFR Section 37.4 contains the definitions of the terms used in the implementation of the nondiscrimination and equal opportunity requirements of WIA. For convenience, some of the definitions found in that section are listed below. If a conflict exists between a term, as it is defined in this policy and 29 CFR Section 37.4, the definitions in 29 CFR Part 37.4 is controlling.

Aid, benefits, services, or training means WIA Title I—financially assisted services, financial or other aid, or benefits provided by or through a recipient or its employees, or by others through contract or other arrangements with the recipient. “Aid, benefits, services, or training” includes, but is not limited to:

- (1) Core and intensive services;
- (2) Education or training;
- (3) Health, welfare, housing, social service, rehabilitation, or other supportive services;
- (4) Work opportunities; and
- (5) Cash, loans, or other financial assistance to individuals. As used in this part, the term includes any aid, benefits, services, or training provided in or through a facility that has been constructed, expanded, altered, leased, rented, or otherwise obtained, in whole or in part, with Federal financial assistance under Title I of WIA.

Applicant is an individual who is interested in being considered for WIA Title I financially assisted aid, benefits, services, or training by a recipient, and who has signified that interest by submitting personal information in response to a request by a recipient.

Applicant for employment means a person or person(s) who make(s) application for employment with a recipient of Federal financial assistance under WIA Title I.

Beneficiary means the individual or individuals intended by Congress to receive aid, benefits, services or training from a recipient.

CRC means the Civil Rights Center, Office of the Assistant Secretary for Administration and Management, U.S. Department of Labor.

DOL means the U.S. Department of Labor, including its agencies and organizational units.

Disability means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.

(1)

- (i) The phrase physical or mental impairment means—

(A) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine;

(B) Any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(ii) The phrase physical or mental impairment includes, but is not limited to, such contagious and non-contagious diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism. The phrase "physical or mental impairment" does not include homosexuality or bisexuality.

(2) The phrase major life activities means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) The phrase has a record of such an impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(4) The phrase is regarded as having an impairment means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by the recipient as being such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (1) of this definition but is treated by the recipient as having such an impairment.

Eligible applicant/registrant is an applicant who has been determined eligible to participate in one or more WIA Title I financially assisted programs or activities. Entity means any person, corporation, partnership, joint venture, sole proprietorship, unincorporated association, consortium, Indian tribe or tribal organization, Native Hawaiian organization, and/or entity authorized by State or local law; any State or local government; and/or any agency, instrumentality or subdivision of such a government.

Equal Opportunity Officer (EO Officer) is the individual responsible for coordinating a recipient's obligations, under 29 CFR Part 37. This includes the person designated as the State (State WIA EO Officer) and the persons designated by each local area (LWIA EO Officer).

Individual with a disability means a person who has a disability, as defined in this section.

(1) The term "individual with a disability" does not include an individual on the basis of:

(i) Transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders;

(ii) Compulsive gambling, kleptomania, or pyromania; or

(iii) Psychoactive substance use disorders resulting from current illegal use of drugs.

(2) The term “individual with a disability” also does not include an individual who is currently engaging in the illegal use of drugs, when a recipient acts on the basis of such use. This limitation does not exclude as an individual with a disability an individual who:

(i) Has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

(ii) Is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(iii) Is erroneously regarded as engaging in such use, but is not engaging in such use, except that it is not a violation of the nondiscrimination and equal opportunity provisions of WIA or this part for a recipient to adopt or administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in paragraph (1)(i) or (1)(ii) of this definition is no longer engaging in the illegal use of drugs.

(3) With regard to employment, the term “individual with a disability” does not include any individual who:

(i) Is an alcoholic:

(A) Whose current use of alcohol prevents such individual from performing the duties of the job in question, or

(B) Whose employment, by reason of such current alcohol abuse, would constitute a direct threat to property or the safety of others; or

(ii) Has a currently contagious disease or infection, if:

(A) That disease or infection prevents him or her from performing the duties of the job in question, or

(B) His or her employment, because of that disease or infection, would constitute a direct threat to the health and safety of others.

Local Workforce Investment Area grant recipient means the entity that receives WIA Title I financial assistance for a Local Workforce Investment Area directly from the Governor and disburses those funds for workforce investment activities.

Participant means an individual who has been determined to be eligible to participate in, and who is receiving aid, benefits, services or training under, a program or activity funded in whole or in part under Title I of WIA. “Participant” includes, but is not limited to, applicants receiving any service(s) under state Employment Service programs, and claimants receiving any service(s) under state Unemployment Insurance programs.

Qualified individual with a disability means:

(1) With respect to employment, an individual with a disability who, with or without reasonable accommodation, is capable of performing the essential functions of the job in question;

(2) With respect to aid, benefits, services, or training, an individual with a disability who, with or without reasonable accommodation and/or reasonable modification, meets the essential eligibility requirements for the receipt of such aid, benefits, services, or training.

Reasonable Accommodation

(1) The term “reasonable accommodation” means:

(i) Modifications or adjustments to an application/registration process that enables a qualified applicant/registrant with a disability to be considered for the aid, benefits, services, training, or employment that the qualified applicant/registrant desires; or

(ii) Modifications or adjustments that enable a qualified individual with a disability to perform the essential functions of a job, or to receive aid, benefits, services, or training equal to that provided to qualified individuals without disabilities. These modifications or adjustments may be made to:

(A) The environment where work is performed or aid, benefits, services, or training are given; or

(B) The customary manner in which, or circumstances under which, a job is performed or aid, benefits, services, or training are given; or

(iii) Modifications or adjustments that enable a qualified individual with a disability to enjoy the same benefits and privileges of the aid, benefits, services, training, or employment as are enjoyed by other similarly situated individuals without disabilities.

(2) Reasonable accommodation includes, but is not limited to:

(i) Making existing facilities used by applicants, registrants, eligible applicants/ registrants, participants, applicants for employment, and employees readily accessible to and usable by individuals with disabilities; and

(ii) Restructuring of a job or a service, or of the way in which aid, benefits, or training is/are provided; part-time or modified work or training schedules; acquisition or modification of equipment or devices; appropriate adjustment or modifications of examinations, training materials, or policies; the provision of readers or interpreters; and other similar accommodations for individuals with disabilities.

(3) To determine the appropriate reasonable accommodation, it may be necessary for the recipient to initiate an informal, interactive process with the qualified individual with a disability in need of the accommodation. This process should identify the precise limitations resulting from the disability and potential reasonable accommodations that could overcome those limitations.

Recipient means any entity to which financial assistance under WIA 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 WIA 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 WIA Title I (rather than disbursing the funds to another recipient), the Governor is also a recipient.

“Recipient” includes, but is not limited to:

- (1) State-level agencies that administer, or are financed in whole or in part with, WIA Title I funds;
- (2) State Employment Security Agencies;
- (3) State and local Workforce Investment Boards;
- (4) LWIA grants 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, excluding the operators of federally-operated Job Corps centers;
- (9) Job Corps national training contractors;
- (10) Outreach and admissions agencies, including Job Corps contractor’s that perform these functions;
- (11) Placement agencies, including Job Corps contractors that perform these functions; and
- (12) Other National Program recipients.

In addition, for purposes of this part, One-Stop partners, as defined in section 121(b) of WIA, 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.

Respondent means a grant applicant or recipient (including a Governor) against whom a complaint has been filed under the nondiscrimination and equal opportunity provisions of WIA or this part.

Service Provider means:

- (1) Any operator of, or provider of aid, benefits, services, or training to:
 - (a) Any WIA Title I—funded program or activity that receives financial assistance from or through any State or LWIA grant recipient; or
 - (b) 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. Small recipient means a recipient who:

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

State Administrative Entity (SAE) for the Workforce Investment Act in Arizona is the Employment Administration/WIA Section, 1789 W. Jefferson – Site Code 920Z, Phoenix, Arizona 85007, Attention: Marcia McCaskill, State EO Officer, 602-542-3957.

WIA Title I funded program or activity means:

(1) A program or activity, operated by a recipient and funded, in whole or in part, under Title I of WIA, that provides either:

- (i) Any aid, benefits, services, or training to individuals; or
- (ii) Facilities for furnishing any aid, benefits, services, or training to individuals;

(2) Aid, benefits, services, or training provided in facilities that are being or were constructed with the aid of Federal financial assistance under WIA Title I; or

(3) Aid, benefits, services, or training provided with the aid of any non-WIA Title I funds, property, or other resources that are required to be expended or made available in order for the program to meet matching requirements or other conditions which must be met in order to receive the WIA Title I financial assistance. See the definition of “aid, benefits, services or training” in this section.

WIA Title I funded program or activity. means:

(1) A program or activity, operated by a recipient and funded, in whole or in part, under Title I of WIA, that provides either:

- (i) Any aid, benefits, services, or training to individuals; or
- (ii) Facilities for furnishing any aid, benefits, services, or training to individuals;

(2) Aid, benefits, services, or training provided in facilities that are being or were constructed with the aid of Federal financial assistance under WIA Title I; or

(3) Aid, benefits, services, or training provided with the aid of any non-WIA Title I funds, property, or other resources that are required to be expended or made available in order for the program to meet matching requirements or other conditions which must be met in order to receive the WIA Title I financial assistance.

See the definition of “aid, benefits, services, or training” in this section.