

P.O. Box 995
1550 Gadsden Street
Columbia, SC 29202
dew.sc.gov



Henry McMaster
Governor

Cheryl M. Stanton
Executive Director

STATE INSTRUCTION NUMBER 16-15

TO: Local Workforce Development Board Chairs
Local Workforce Area Signatory Officials
Local Workforce Area Administrators

SUBJECT: Discrimination Complaint Procedures Under WIOA

ISSUANCE DATE: May 26, 2017

EFFECTIVE DATE: Immediately

Purpose: To establish procedures for handling complaints of discrimination on a prohibited basis or bases under Section 188 of the Workforce Innovation and Opportunity Act (WIOA). Nothing contained in the procedures shall be deemed to prejudice the separate exercise of other legal rights in pursuit of remedies and sanctions available outside of WIOA.

Policy: Section 188 of WIOA prohibits discrimination 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, political affiliation or belief, or (against any beneficiary, applicant, or participant in programs financially assisted under Title I of WIOA) on the basis of the individual's citizenship status or participation in any WIOA Title I-financially assisted program or activity.

29 CFR 38.69, requires that any person or any specific class of individuals may file a written complaint who believe(s) that they have been or are being discriminated against on one or more prohibited bases or believe they have been or are being retaliated against (as described in 29 CFR 38.19). The State Office of Equal Opportunity develops and publishes the complaint processing procedures required in 29 CFR 38.72.


Action: Each Local Workforce Development Board (LWDB) must ensure that the Discrimination Complaint Procedures are communicated to all program staff, operators, and service provider staff in its area. The LWDB must take appropriate steps to ensure program staff, operators and service provider staff, within its purview, comply with the enclosed Discrimination Complaint Procedures. The Equal Opportunity Complaint Information Form must be made available to any and all interested individuals, as effectively to individuals with disabilities as it is to others, and in appropriate languages to ensure meaningful access to LEP individuals.

State Instruction Number 16-15
Discrimination Complaint Procedures Under WIOA
May 26, 2017
Page 2 of 2

The Equal Opportunity Complaint Information Form is available for local areas to access, link, and/or print as needed:

([https://scworks.org/media/EEO/Equal Opportunity Complaint Information Form.pdf](https://scworks.org/media/EEO/Equal_Opportunity_Complaint_Information_Form.pdf)).

Inquiries: Questions may be directed to Stephani Frese at sfrese@dew.sc.gov or 803-737-2381.

A handwritten signature in cursive script that reads "Patricia Sherlock". The signature is written in black ink and is positioned above a horizontal line.

Patricia Sherlock, Director
Policies and Procedures

Attachment

South Carolina Department of Employment and Workforce
Office of Equal Opportunity
PROCEDURE FOR FILING DISCRIMINATION-RELATED COMPLAINTS

It is against the law for recipients of WIOA Title I funds [29 CFR 38.4 (zz)] 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.

This procedure was developed for managing any written complaint of discrimination received from any person or any specific class of individuals who believe(s) that they have been or are being discriminated against on one or more prohibited basis or believe they have been or are being retaliated against (as described in 29 CFR 38.72).

WHO MAY FILE A COMPLAINT

Any person or any specific class of individuals who believe(s) that they have been or are being discriminated against on one or more prohibited bases or believe they have been or are being retaliated against (as described in 29 CFR 38.72) has the right to file a complaint within 180 days of the alleged discrimination. Individuals may file a complaint as a representative of the complainant(s) by providing a letter or other document signed by the complainant(s), authorizing representation.

Discrimination-based complaints related to WIOA service delivery must follow the same procedure.

Complaints not involving discrimination, but involving program or customer service issues, will be directed to the appropriate EO Coordinator for resolution.

FILING A DISCRIMINATION COMPLAINT

1. An individual expressing the desire to file a complaint of discrimination with the Local Workforce Development Area, shall be referred to the State Equal Opportunity (EO) Officer or directed to complete, sign, and submit an Equal Opportunity Complaint Information Form: https://scworks.org/media/EEO/Equal_Opportunity_Complaint_Information_Form.pdf.
2. The complaint information form provides space for the following information:
 - a. the complainant's name, address, and contact information to include phone number and e-mail address;
 - b. identification of the individual as the complainant or the complainant's representative, and the representative's contact information;
 - c. the identity of the entity/individual alleged to be responsible for discrimination;
 - d. the basis/bases for the alleged discrimination;
 - e. a description of the alleged violation, (including the date of any event and sufficient details to allow the recipient or the United States Department of Labor's (USDOL) Civil Rights Center (CRC) to determine jurisdiction and whether the allegations, if true, violate the EO provisions of WIOA;
 - f. the names and contact information of any witness to be contacted for further information about the complaint;
 - g. whether the complainant has filed a written complaint with anyone else, such as the Equal Opportunity Commission (EEOC), or USDOL CRC about the same events or actions; when such a written complaint was filed; whether a final decision has been received, etc.;
 - h. what remedies are being sought; and
 - i. the date and the complainant's signature or signature of complainant's authorized representative.
3. The complainant reserves the right to directly file the discrimination-based complaint with the USDOL CRC, if they so choose, at: <https://www.dol.gov/oasam/programs/crc/external-enforcement-complaints.htm>. The USDOL CRC provides a complaint form for filing a discrimination-based complaint. The form is available at: <https://www.dol.gov/oasam/programs/crc/DL1-2014a-English.pdf>.

4. Complaints of discrimination must be filed with either the State EO Officer or the USDOL CRC, within 180 days of the most recent event or conditions giving rise to complaint.

If filing with the State EO Officer, use:

https://scworks.org/media/EEO/Equal_Opportunity_Complaint_Information_Form.pdf

If filing with USDOL CRC, use:

<https://www.dol.gov/oasam/programs/crc/DL1-2014a-English.pdf>.

PROCESSING A DISCRIMINATION COMPLAINT

1. The State EO Officer is responsible for determining the appropriate jurisdiction over the complaint.
 - a. Upon confirming jurisdiction, the complaint must be recorded in the EO Officer's complaint log [38 CFR 41(c)].
 - b. Where the EO Officer determines there is no jurisdiction over the complaint or the complaint has been filed after 180 days from the alleged act of discrimination, the EO Officer must notify the complainant(s) in writing within five business days.

This Notice of Lack of Jurisdiction must include:

- (1) a statement of the reasons for that determination; and
- (2) notice that the complainant has a right to file a complaint with the USDOL CRC within 30 days of the date on which the complainant receives the Notice at Director, Civil Rights Center, U.S. Department of Labor, 200 Constitution Ave., NW Suite N-4123, Washington, DC 20210.

2. Where the EO Officer determines there is jurisdiction over the complaint, the EO Officer shall provide an initial, written notice to the complainant that contains the following information:
 - a. an acknowledgment that the recipient has received the complaint;
 - b. notice that the complainant has the right to be represented in the complaint process;
 - c. notice of rights (contained in 29 CFR 38.35);
 - d. 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 29 CFR 38.4(h) and (i), 38.34, and 38.36);

- e. a written statement of the issue(s) to the complainant that will include:
 - (1) a list of the issues raised in the complaint; and
 - (2) for each such issue, a statement whether the recipient will accept the issue for investigation or reject the issue, and the reasons for each rejection.
- 3. Options for resolving the complaint must include alternative dispute resolution (ADR), at the complainant's choice.
 - a. The complainant may attempt ADR at any time after the complainant has filed a written complaint with the State EO Officer but before a Notice of Final Action has been issued.
 - b. The choice whether to use ADR or the customary process rests with the complainant.
 - c. A party to any agreement reached under ADR may notify the Director of the USDOL CRC in the event the agreement is breached.
 - (1) 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.
 - (2) If, following an evaluation of the circumstances, the Director determines that the agreement has been breached, the complaint will be reinstated and processed in accordance with South Carolina's Office of Equal Opportunity's procedures.
 - d. If the parties do not reach an agreement under ADR, the complainant may file a complaint with the Director (as described in 29 CFR 38.69 through 38.71).
- 4. The State EO Officer has 90 days to resolve the complaint and issue a written Notice of Final Action.
 - a. The written Notice of Final Action must be provided to the complainant within 90 days of the date on which the complaint was filed and contain the following information:
 - (1) For each issue raised in the complaint, a statement of either:
 - (A) The State EO Officer'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 new complaint with the USDOL CRC within 30 days of the date on which the complainant receives the Notice of Final

Action, if the complainant is dissatisfied with the resolution of their complaint at the state level.

5. If the State EO Officer fails to issue the Notice within 90 days of the date on which the complaint was filed, the complainant may file a new complaint with the USDOL CRC within 30 days of the expiration of the 90-day period (in other words, within 120 days of the day on which the original complaint was filed.)
6. The State EO Officer will offer full cooperation with any state or federal investigation in accordance with the aforementioned proceedings or with any criminal investigation.

CORRECTIVE ACTION

If a determination of discrimination is found through the process of a complaint investigation, the respondent shall be requested to comply voluntarily with corrective action(s) or a conciliation agreement to correct the discriminatory actions or conditions. Actions to correct discrimination deficiencies may include any of the following:

- Rewriting policies;
- Reinstatement to program or employment;
- Benefits or other services denied; or
- Any other remedial or affirmative relief, such as outreach, recruitment, and training to ensure equal opportunity.

It is the responsibility of the South Carolina Department of Employment and Workforce, as the state administrative agency for WIOA, to provide technical assistance and evaluate progress made toward completion of corrective actions. If respondent compliance with the corrective actions or conciliation agreement is not secured through voluntary means, the State will proceed with State-issued sanctions procedures.

RECORDKEEPING

The South Carolina Department of Employment and Workforce shall maintain an automated or manual log of discrimination complaints to include: name and address of the complainant; the basis of the complaint, (i.e., race, gender, age, etc.); a description of the complainant; the date the complaint was filed; the disposition and date of disposition of the complaint; and other relevant information. Records pertaining to discrimination complaints, investigations, or any other such actions shall be retained for a minimum of three years from the date of the resolution.

Information pertaining to the identity of any persons providing information related to or assisting in an investigation or a compliance review shall be maintained in a confidential manner to the extent possible. If it is necessary that a person's identity be disclosed, the person shall be protected from retaliation.

INTIMIDATION AND RETALIATION ARE PROHIBITED

WIOA prohibits intimidation and retaliation against individuals for filing a complaint; opposing a prohibited practice; furnishing information; assisting or participating in any manner in an investigation, review, hearing, or any other activity related to the administration of, exercise or authority under, or privilege secured by, its nondiscrimination and equal opportunity provisions (29 CFR 38.19). The sanctions contained in Section 188(b) of WIOA and in 29 CFR 38 may be imposed against any recipient program or activity that engages in any such retaliation or intimidation or fails to take appropriate steps to prevent such activity.

REMINDER OF SIGNIFICANT TIME FRAMES

- **When the complainant files the Equal Opportunity Complaint Information Form at the State level, the State Equal Opportunity (EO) Officer will issue a written Notice of Final Action on complaints within 90 days of the date on which the complaint is filed.**
- **If the complainant files with both the USDOL Civil Rights Center (CRC) and the State EO Officer (State Level), the complainant will be informed that the State EO Officer has 90 days to process the complaint and that the CRC will not investigate the complaint until the 90 day period has expired.**
- **If by the end of 90 days from the date on which the complaint was filed the State EO Officer fails to issue a Notice of Final Action, the complainant may file a complaint with the Director of the CRC within 30 days of the expiration of the 90 day period.**
- **Immediately upon determining that it does not have jurisdiction, the State EO Officer shall notify the complainant in writing that the State does not have jurisdiction over the complainant, including reasons for the determination and the complainant's right to file with the appropriate party or the Director of the CRC within 30 days of the notice.**
- **The complainant will be notified that if the complaint is not filed within 180 days of the alleged act of discrimination or a complaint has not been filed within 30 days of the receipt of the grant recipient's determination of expiration of the 90 day period, the Director of the CRC may extend the time limits for good cause shown.**

RELEVANT CONTACT INFORMATION

Office of Equal Opportunity / State EO Officer
South Carolina Department of Employment and Workforce
PO Box 908
Columbia, SC 29202

Form: https://scworks.org/media/EEO/Equal_Opportunity_Complaint_Information_Form.pdf

Director, Civil Rights Center
U.S. Department of Labor
200 Constitution Ave., NW Suite N-4123
Washington, DC 20210

Form: <https://www.dol.gov/oasam/programs/crc/external-enforc-complaints.htm>