

ARIZONA DEPARTMENT OF ECONOMIC SECURITY



**WORKFORCE INVESTMENT AND  
OPPORTUNITY ACT POLICY  
MANUAL**

**CHAPTER 2 - SECTION 700**

**SUBJECT: EQUAL OPPORTUNITY & NONDISCRIMINATION**

**700 EQUAL OPPORTUNITY & NONDISCRIMINATION**

All recipients, as defined at 29 CFR 38, under the Workforce Innovation and Opportunity Act (WIOA) Title I are responsible for ensuring Equal Opportunity (EO) and nondiscrimination in programs and activities funded in whole or in part under WIOA Title I. Local Workforce Development Boards must ensure that all sub-recipients in the Local Workforce Development Area (LWDA) are in compliance with 29 CFR 38 and Section 188 of WIOA. This responsibility includes compliance with all nondiscrimination requirements in the administration and operation of programs, activities, and employment as provided by WIOA Section 188 and 29 CFR Part 38. These regulations apply to all programs and activities that are operated by ARIZONA@WORK partners as part of the ARIZONA@WORK system.

All recipients and sub-recipients under WIOA Title I are directly responsible for compliance with:

- A. Federal nondiscrimination laws, regulations, guidelines, and directives;
- B. State nondiscrimination laws, executive orders, regulations, and guidelines;
- C. Local nondiscrimination ordinances;
- D. EO and non-discrimination policies, procedures, administrative directives, and the Nondiscrimination Plan (NDP);
- E. Terms and conditions of contracts and agreements established by the Arizona Department of Economic Security (ADES).

**701 GENERAL PROHIBITION ON DISCRIMINATION**

It is against the law for recipients and sub-recipients of WIOA Title I funds to discriminate on the basis of race, color, religion, sex (including pregnancy, child birth or related medical condition, sex stereotyping, transgender status (gender expression and gender identity)), national origin (including Limited English Proficiency (LEP)), age, disability, political affiliation or belief, citizenship/status as a lawfully admitted immigrant authorized to work in the United States, and participation in any WIOA Title I financially assisted program or activity.

ADES, LWDA, ARIZONA@WORK partners, service providers, including eligible training providers, work-based training providers (On-the-Job training employers) and Work Experience (WEX) employers must not discriminate when:

- Deciding who will be enrolled in, or have access to any WIOA Title I financially assisted program, service, or activity,
- Providing opportunities in, or treating any person with regard to WIOA Title I financially assisted program, service, or activity, and
- Making employment decisions in the administration or, or in connection with WIOA Title I financially assisted program, service, or activity.

## **702 EQUAL OPPORTUNITY OFFICER**

EO Officers play a vital role in ensuring compliance with the EO and nondiscrimination requirements of WIOA Section 188 and 29 CFR 38.

### **.01 State WIOA EO Officer**

ADES must ensure the appointment of a State WIOA EO Officer, as required, who will report directly to the appropriate designated state agency official and who must not be in a position that would constitute a conflict of interest. The State WIOA EO Officer is responsible for ensuring that all WIOA Title I programs are operated in a nondiscriminatory manner. State WIOA EO Officers duties include:

- A. Serving as an ADES liaison to the United States Department of Labor (USDOL) Civil Rights Center (CRC).
- B. Monitoring LWDA's, ARIZONA@WORK partners, and the state Reemployment Assistance Administration, which includes Unemployment Insurance Benefits, to ensure WIOA Title I financially assisted programs and/or activities are operating in a nondiscriminatory manner. The EO Officer prepares reports, including any needed corrective actions and monitors corrective actions for completion and compliance;
- C. Reviewing the state's and LWDA's written policies to ensure the policies are nondiscriminatory.
- D. Developing, coordinating, providing oversight, researching, analyzing data and preparing reports, revising policies and procedures for EO and civil rights, as well as other communications relative to programmatic performance on assigned investigations (i.e. determines nature, scope, and direction of the investigation);

- E. Conducting research and training concerning EO and nondiscrimination requirements;
- F. Writing correspondence and reports regarding findings of investigations;
- G. Providing appropriate resource and referral information for complainants and for members of the general public relative to discrimination and employment law;
- H. Reviewing and analyzing complaints for WIOA jurisdiction and basis of discrimination;
- I. Reviewing data and information to discern specific trends or patterns which could reflect possible accessibility issues or need for targeted outreach;
- J. Initiating and coordinating meetings to provide information to or resolve issues with contractors, programs or other groups both within and outside ADES and/or the general public;
- K. Providing technical assistance and training, as required, to contracted providers and ADES staff relating to the implementation and operation of contracted activities and requirements within designated LWDA, ARIZONA@WORK partners, and the state Reemployment Assistance Administration;
- L. Interpreting federal and state laws, regulations, policies, and procedures related to program services, as well as LWDA, ARIZONA@WORK partners, and Reemployment Assistance Administration policies and procedures to ensure compliance with EO and civil rights;
- M. Developing and publishing the procedures for filing discrimination complaints and the state's Reemployment Assistance Administration procedures for processing such, including the tracking of complaints filed against the recipient, developing procedures for investigating and resolving complaints filed against the LWDA, ensuring such procedures are followed, and making procedures available to the public in appropriate languages and formats;

- N. Assisting in the client advocacy process as it relates to issues with contractors and ARIZONA@WORK partner-provided programs for designated LWDA's;
- O. Overseeing the development and implementation of the State of Arizona's NDP under 29 CFR 38.54;
- P. Preparing and presenting EO information and/or concerns to executive management, regional directors, managers, and supervisors;
- Q. Maintaining competency by attending EO Officer and staff training, as required by the Director of the CRC; and
- R. Performing related work, as required.

**.02 Local Workforce Development Area EO Officer**

Each LWDA must designate an LWDA or Tribal EO Officer who does not hold another position that would constitute a conflict of interest. The LWDA or Tribal EO Officer is responsible for ensuring EO and nondiscrimination in the administration and in the operation of programs, activities, and services within the ARIZONA@WORK system in the LWDA, which include:

- A. Serving as the LWDA's liaison with CRC;
- B. Conducting monitoring review of the ARIZONA@WORK Job Centers, ARIZONA@WORK partners, service providers, including eligible training providers, and affiliates that are part of the LWDA ARIZONA@WORK system to ensure compliance with the State of Arizona's NDP and the EO and nondiscrimination requirements of WIOA Section 188 and 29 CFR Part 38;
- C. Providing EO training for ARIZONA@WORK Job Center staff, service providers and affiliates;
- D. Developing and publishing the LWDA's procedures for discrimination complaints, including tracking the discrimination complaints filed against the LWDA, developing procedures for investigating and resolving complaints filed against the LWDA, making sure those procedures are followed, making them available to the public in appropriate languages and formats, and the procedures for filing a complaint;

- E. Processing and investigating discrimination complaints in the LWDA;
- F. Reviewing LWDA written policies to ensure they are nondiscriminatory;
- G. Providing reports of all EO matters to the LWDA Director;
- H. Ensuring that brochures, pamphlets, flyers, and other publications and materials, provided in written or oral form, electronic or hard copy formats, that describe any WIOA Title I funded program or activity to customers, staff or general public include the EO Tagline – “Equal Opportunity Employer/Program. Auxiliary aids and services are available upon request to individuals with disabilities”;
- I. Ensuring reasonable efforts are made to provide language services, interpretation or translation, free of charge, for Limited English Proficiency (LEP) individuals;
- J. Ensuring each contract, agreement, or application for financial assistance under WIOA Title I includes, in its entirety and without changes, EO and nondiscrimination assurance language found at 29 CFR Part 38.25 (a). For smaller contracts or agreements, such as On-the-Job Training (OJT), the following reference to the language may be used: “The assurances at 29 CFR Part 38.25 (a) apply to this contract/agreement”;
- K. Ensuring each program or activity, when viewed in its entirety, is operated in a manner that makes it accessible to qualified individuals with a disability. This may include making a program available at an alternative accessible facility. Program accessibility also requires the provision of auxiliary aids or services, such as qualified interpreters on site or through video remote interpreting services, exchange of written notes, voice, text, and audio-based telecommunications products and systems, videotext displays, telephone handset amplifiers, assistive listening systems, or other effective aids for individuals with hearing impairments, braille materials and displays, large print materials, accessible electronic and information technology or other effective aids;
- L. Notifying the State WIOA EO Officer and the Director of the CRC of any administrative enforcement actions or lawsuits filed against the

LWDA 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 WIOA Title I financially assisted programs or activities; and

- M. Maintaining competency by attending EO and nondiscrimination training.

### **703 NON-DISCRIMINATION PLAN**

The State WIOA EO Officer must develop the NDP, which includes actions the state and LWDA's will take to ensure WIOA Title I programs, program operators and activities are complying with EO requirements in Section 188 and 29 CFR 38. The NDP provides information for the following required elements:

- A. Element One: Designation of State and Local Level EO Officers (29 CFR 38.23-38.28);
- B. Element Two: Notice and Communication (29 CFR 38.54);
- C. Element Three: Review Assurances, Job Training Plans, Contracts, Policies and Procedures (29 CFR 38.25 and 38.54);
- D. Element Four: Affirmative Outreach (29 CFR 38.54 (c) (1) (v));
- E. Element Five: Compliance with Section 504 of the Rehabilitation Act of 1973, as amended and 29 CFR Part 38.54;
- F. Element Six: Data and Information Collection and Maintenance (29 CFR 38.54);
- G. Element Seven: Monitoring Recipients for Compliance (29 CFR 38.54 (c) (1) (viii));
- H. Element Eight: Complaint Processing Procedures (29 CFR 38.54); and
- I. Element Nine: Corrective Actions/Sanctions (29 CFR 38.54 (d) (2) (vii)).

The State of Arizona's NDP is located online on the ADES WIOA EO webpage at: <https://des.az.gov/services/employment/workforce-development-act/workforce-investment-act-wia-equal-opportunity>. The State WIOA EO Officer must update the NDP every two years.

## **704 EO is the Law Poster**

Each LWDA must prominently display the “Equal Opportunity is the Law” poster in reasonable numbers and places where customers and staff can easily see it in English or other appropriate languages, as determined by the LWDA. The information contained in the poster must also be presented in every orientation to new participants, new employees, and/or the general public. Discussion of the rights and responsibilities under the nondiscrimination and EO provisions of WIOA, including the right to file a complaint of discrimination at the local, state, or federal level is required, as described at 29 CFR 38.39.

Additionally, the information in the “Equal Opportunity is the Law” poster must be, at a minimum:

- A. Disseminated in internal memoranda and other written or electronic communications with staff;
- B. Included in employee and participant handbooks or manuals regardless of form, including electronic and paper form if both are available; and
- C. Provided to each participant and employee and made part of each employee and participant file in both paper and electronic files.

## **705 EO Monitoring**

State and Local EO Officers are responsible for monitoring recipient programs and ensuring compliance with nondiscrimination and EO provisions of WIOA Section 188 and 29 CFR 38.

### **.01 State-Level EO Monitoring**

The State WIOA EO Officer must monitor LWDA's for nondiscrimination and EO provisions of WIOA Section 188 and 29 CFR 38 annually. The State WIOA EO Officer is responsible for:

- A. Ensuring compliance with the nondiscrimination and EO provisions of WIOA Section 188 and 29 CFR 38, and negotiating with the LWDA, where appropriate, to secure voluntary compliance when noncompliance is found;

- B. Monitoring and investigating each LWDA's activities on an annual basis to ensure compliance with WIOA Section 188 and 29 CFR 38, including determining whether each LWDA is conducting its WIOA Title I financially assisted program or activity in a non-discriminatory way. At a minimum, each annual monitoring review must include:
  - 1. A statistical or other quantifiable analysis of records and data kept under 29 CFR 38.41, including analysis by race/ethnicity, sex, LEP, preferred language, age and disability status using the Two Standard Deviation Report and/or the 80 Percent Rule Report;
  - 2. An investigation of any significant differences identified in (A) of this section in the participation of programs, activities, or employment provided by the LWDA, to determine whether these differences appear to be caused by discrimination. The investigation must be conducted through a review of the LWDA's records or any other appropriate means; and
  - 3. An assessment to determine whether the recipient has fulfilled its administrative obligations under WIOA Section 188 or 29 CFR 38 (e.g. recordkeeping, notice and communication) and any duties included in the NDP.
- C. Developing and publishing discrimination complaint processing procedures, tracking discrimination complaints, developing procedures for investigating and resolving discrimination complaints and developing procedures for filing a discrimination complaint, all of which must be available to the public in appropriate languages and formats.
- D. Participating in training to maintain competency as it relates to WIOA Title I, EO and nondiscrimination.
- E. Developing and implementing the NDP.

## **.02 LWDA-Level EO Monitoring**

LWDAs are responsible for monitoring all ARIZONA@WORK Job Centers, One-Stop operators, service providers, including eligible training

providers, work-based training providers (OJT employers), WEX employers, sub-recipients and affiliates that are part of the LWDA ARIZONA@WORK system to ensure compliance with the State of Arizona's NDP and the EO and nondiscrimination requirements of WIOA Section 188 and 29 CFR Part 38. LWDA and Tribal EO Officer responsibilities include:

- A. Monitoring and investigating all ARIZONA@WORK Job Center and affiliate site, One-Stop operator and service provider activities, on an annual basis, to ensure compliance with WIOA Section 188 and 29 CFR 38.
- B. Conducting onsite reviews of all ARIZONA@WORK Job Centers and affiliate sites, One-Stop operators, and service providers – including eligible training providers, work-based training providers (OJT employers), WEX employers, and sub-recipients. If the one-stop operator is the local board the designated EO Officer must be designated in the local EO policy.
- C. Evaluating all ARIZONA@WORK Job Centers and affiliate sites, One-Stop operators, and service providers – including eligible training providers, work-based training providers (OJT employers) and WEX employers, sub-recipients and affiliates, to assess their capability to provide reasonable accommodations.

## **706 EO Investigations**

If the LWDA or Tribal EO Officer determines there may be violations of WIOA Section 188 and 29 CFR 38, the investigation must include:

- A. A statistical or other quantifiable analysis of records and data kept under 29 CFR 38.41, including analysis by race/ ethnicity, sex, LEP, preferred language, age and disability status using the Two Standard Deviation Report and/or the 80 Percent Rule Report in AJC.
- B. An investigation of any significant differences identified in (A) of this section in the participation of programs, activities, or employment provided by the all ARIZONA@WORK Job Centers and affiliate sites, One-Stop operators, service providers, including eligible training, work-based training (OJT employers), WEX employers and sub-recipients to determine whether these differences appear to be caused by

discrimination. The investigation may be conducted through a review of the LWDA's records or any other appropriate means.

- C. An assessment to determine whether the recipient has fulfilled its administrative obligations under WIOA Section 188 or 29 CFR 38 (e.g. recordkeeping, notice and communication) and any duties included in the NDP.

## **707 PROHIBITION OF DISABILITY DISCRIMINATION**

Discrimination based on disability, in the provision of any aid, benefit, service or training under WIOA Title I financially assisted programs or activities directly or through contractual, licensing, or other arrangements, is prohibited.

### **01. Discrimination Based on Disability**

- A. Discrimination based on disability includes:
  - 1. Denying a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, service or training, including opportunities to seek employment and work in competitive integrated settings.
  - 2. Not providing reasonable accommodations that would allow an individual with a disability to participate in or benefit from the aid, benefit, service or training.
  - 3. Not providing reasonable modification of policies and procedures that would allow accessibility of an aid, benefit, service or training.
  - 4. Not providing an architecturally accessible location to deliver integrated program services.
- B. Disability is defined as a physical or mental impairment that substantially limits one or more major life activities; a record of such impairment; or being regarded as having such an impairment.
- C. Physical and mental impairment means:
  - 1. Any physiological disorder or condition, cosmetic disfigurement or anatomical loss affecting one or more body systems, such as; neurological, musculoskeletal, special sense organs, respiratory (including speech organs),

cardiovascular, reproductive, digestive, genitourinary, immune, hemic, lymphatic, skin, or endocrine; or

2. Any mental or psychological disorder such as intellectual disability or organic brain syndrome, emotional or mental illness, and specific learning disabilities.
- D. Physical and mental impairment includes, but is not limited to: contagious and noncontagious diseases and conditions such as the following: orthopedic, visual, speech, and hearing impairments, and cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, intellectual disability, emotional illness, pregnancy-related medical conditions, dyslexia, and other specific learning disabilities, Attention Deficit Hyperactivity Disorder, Human Immunodeficiency Virus infection (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism.
- E. Major life activities include, but are not limited to:
1. Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, writing, communication, interacting with others and working; and
  2. The operation of a "major bodily function", such as functions of the immune system, special sense organs, and skin, normal cell growth, and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive systems. The operation of a major bodily function includes the operation of an individual organ within body system.

## **.02 Documentation of a Disability**

Disabilities must be self-identified by the applicant. If an individual indicates that he or she has a disability, the Americans with Disabilities Act (ADA) does not preclude agencies and providers, which administer programs that provide services to individuals with disabilities, from asking for documentation of a disability, as it is required for eligibility purposes and service provision. For the WIOA Title I-B Adult, Dislocated Worker

and Youth Programs, a list of acceptable documentation of a disability is included in the [WIOA Title I-B Eligibility Checklist](#). Documentation of a disability must be kept in a separate, locked location and must not be kept in the participant's program file.

### **.03 Service Animals**

Recipients must modify LWDA policies and practices to permit the use of services animals by individuals with disabilities, as described at 29 CFR 38.16. Service animals do not include animals that are only used to provide emotional support, well-being, comfort, or companionship. A service animal is defined as any dog or miniature horse that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals, as defined at 29 CFR 38.4 (fff).

- A. A service animal must be under the control of its handler. This means the service animal must have a harness, leash, or other tether, unless either the handler is unable because of a disability to use a harness, leash, or other tether or the use of such would interfere with the services animal's safe, effective performance of work or tasks. When a harness, leash, or tether cannot be used for these reasons, the service animal must be under the handler's control using voice control, signals, or other effective means.
- B. Recipients may ask an individual with a disability to remove a service animal from an ARIZONA@WORK Job Center when the animal is out of control and the animal's handler does not take effective action to control it or the animal is not housebroken.
- C. When a recipient properly excludes a service animal for one of the reasons listed above, the individual with a disability must be provided the opportunity to participate in WIOA Title I-B financially assisted services without having the animal on the premises.
- D. Recipients are not responsible for the care or supervision of a service animal.

- E. Recipients must not ask about the nature or extent of a person's disability, but may ask the following two questions to determine whether an animal qualifies as a service animal:
    - 1. Is the animal required because of a disability?
    - 2. What work or task has the animal been trained to perform?
- Recipients must not require documentation, such as proof that the animal has been certified, trained, or licensed as a service animal.
- F. Individuals with disabilities must be permitted to be accompanied by their service animals in all areas of an ARIZONA@WORK Job Center where all other participants would be allowed to go.

#### **.04 Programmatic and Physical Accessibility**

Recipients and sub-recipients must ensure they are providing both physical and programmatic accessibility that allows individuals with a disability to participate in or benefit from the aid, benefit, service, or training.

##### A. Physical Accessibility

No qualified individual with a disability may be excluded from participation or be denied benefits of a recipients' service, program, or activity or be subjected to discrimination by any recipient because a recipient's facilities are inaccessible or unusable by individuals with disabilities.

##### B. Programmatic Accessibility

All WIOA Title I financially assisted programs and activities must be programmatically accessible, including:

1. Providing reasonable accommodations to individuals with disabilities;
2. Making reasonable modifications to policies, practices, and procedures;
3. Administering programs in the most integrated setting appropriate;

4. Communicating with persons with disabilities as effectively as with others; and
5. Providing auxiliary aids or services, including assistive technology devices and services where necessary to afford individuals equal opportunity to participate in, and enjoy the benefits of, the program or activity.

## **708 LIMITED ENGLISH PROFICIENCY**

State, LWDA, and Tribal EO Officers must ensure that information provided regarding EO and nondiscrimination is culturally relevant and linguistically appropriate to the population being served.

Services and information in a language other than English for customers with LEP must be provided in order to ensure programmatic accessibility. When an LWDA determines that a significant proportion of the population eligible to be served, as described in local area policy, are more likely to be directly affected by a program/activity needs information in a single language other than English, the ARIZONA@WORK partners must translate written program materials into that language and provide effective interpretation services to members of the significant LEP group.

## **709 DISCRIMINATION COMPLAINTS**

Any person, either by him/herself or through a representative, who believes that either he or she or any specific class of individuals has been or is being subjected to discrimination prohibited by the nondiscrimination and EO provisions of WIOA, 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 WIOA Title I, or in connection with any WIOA Title I funded program or activity.

### **.01 Where to File a Discrimination Complaint**

The State of Arizona uses a three-level system that allows a complainant to file a discrimination complaint at the local level via the LWDA EO Officer; at the state level via the State WIOA EO Officer; or at the federal level via the Director of the CRC.

#### **A. Local Area Complaints**

The complainant may file a discrimination complaint with the LWDA EO Officer. Contact information for the LWDA EO Officer must be made readily available at all LWDA offices, as well as through the LWDA sub recipients and service providers.

B. State Level Complaints

The complainant may file a discrimination complaint with the State WIOA EO Officer by contacting:

State WIOA EO Officer  
Office of Equal Opportunity  
P.O. Box 6123  
Mail Drop 51H3  
Phoenix, Arizona 85005-6123  
Phone: (602) 364-3976  
Email: [OfficeofEqualOpportunity@azdes.gov](mailto:OfficeofEqualOpportunity@azdes.gov)

C. Federal Level Complaints

A complainant may file a discrimination complaint with the Director of the CRC by contacting:

Director  
Civil Rights Center  
ATTN: Office of External Enforcement  
U.S. Department of Labor  
200 Constitution Avenue NW  
Room N-4123  
Washington, DC 20210  
Phone: (202) 693-6502  
Fax: (202) 693-6505, Attn: Office of External Enforcement  
• 15 page limit  
TTY: (202) 693-6515  
Email: [CRCEXternalComplaints@dol.gov](mailto:CRCEXternalComplaints@dol.gov)

Note: When the complainant chooses to file a discrimination complaint directly with the CRC Director, the LWDA EO Officer will assist the complainant, if requested, with completing the U.S. Department of Labor [Complaint Information Form \(DL1-2014A\)](#). The LWDA EO Officer will provide individuals who do not request assistance the necessary forms, addresses, or other information needed to file a discrimination complaint.

The U.S. Department of Labor *Complaint Information Form* may be located:

**English:** <http://www.dol.gov/oasam/programs/crc/DL1-2014A-Rev-April-2011.pdf>

**Spanish:** <http://www.dol.gov/oasam/programs/crc/DL1-2014-span.pdf>

## **.02 When to File a Discrimination Complaint**

A discrimination complaint must be filed within 180 days of an alleged occurrence of discrimination. The CRC Director may extend the filing period if good cause is shown. An extended period for filing a discrimination complaint at the administrative convenience of the CRC Director.

When computing the time period for a discrimination complaint, the first day the complaint is received by the LWDA or State WIOA EO Officer or the CRC Director is excluded and the last day is included to complete the period.

## **.03 What to Include in a Discrimination Complaint**

A discrimination complaint must be in writing, using either the [\*Complaint Information Form \(DL1-2014A\)\*](#) at <https://www.dol.gov/oasam/programs/crc/DL1-2014a-English.pdf>, or any other written form and must include:

1. The complainant's name;
2. The complainant's address, or other means of contacting the complainant;
3. The identity of the respondent (respondent means the recipient, either an individual or entity the complainant alleges is responsible for the discrimination);
4. A detailed description of the complainant's allegations that will allow the LWDA or State WIOA EO Officer or the CRC Director to decide whether:
  - a. WIOA jurisdiction exists over the complaint;

- b. The complaint was filed within the allotted timeframe; and
  - c. The complaint has apparent merit, i.e. the complainant's allegations, if true, would violate WIOA Section 188 or 29 CFR Part 38; and
5. The electronic or handwritten signature of the complainant or the complainant's authorized representative.

#### **.04 Right to 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.

### **710 DISCRIMINATION COMPLAINT PROCESSING**

LWDA and Tribal EO Officers must track complaints, on the *Discrimination Complaint Log* (ESA-1318A), which must be forwarded to the State WIOA EO Officer for review no later than the 15<sup>th</sup> of the month following the end of each quarter. The *Discrimination Complaint Log* contains the name, and address of the complainant, the basis of the complaint, a description of the complaint, the date of the complaint was filed, the disposition of the complaint, the date of the disposition, and any other pertinent information relating to the complaint. The Local EO Officer must inform the State EO Officers about complaint investigations and submit the Discrimination Complaint Log on a quarterly basis. Upon Request from the CRC, the State EO Officer will provide the Discrimination Complaint Log to the CRC.

#### **.01 Processing Procedures**

All recipients must comply with these EO complaint procedures. All complaints must be stamped upon receipt and forwarded to the appropriate EO Officer for processing.

- A. The EO Officer will provide written acknowledgement of receipt of the complaint to the complainant within five calendar days.
- B. Upon receipt of the complaint or information alleging discrimination, the EO Officer must:
  - 1. Review the complaint for accuracy and completeness;
  - 2. Initiate an investigation or fact-finding review on the circumstances underlying the complaint that must last at least 14 calendar days;

3. Provide a written notice to all parties of the specific issues raised in the complaint;
4. Provide a statement on each issue, either accepting the issue for investigation, or rejecting the issue, and the reasons for each rejection;
5. Inform all parties of their right to representation by an attorney or other individual of their choice;
6. Inform all parties of their rights to present evidence;
7. Inform all parties of the right to dispute evidence presented by others;
8. Inform all parties that the complainant has a right to request and receive, at no cost, auxiliary aids and services, and language assistance services. The notice will be translated into non-English language(s), as required in 29 CFR 38.4(h) and (i); and
9. Provide a decision based strictly on the documented evidence.

C. The EO Officer must contact the complainant in writing within 14 calendar days of the complaint receipt, to determine the complainant's willingness to mediate Alternative Dispute Resolution (ADR) process described in Section 709.02, to ensure that the complainant is aware of the following:

1. The choice whether to use ADR or the customary process rests with the complainant;
2. If the parties do not meet reach an agreement under ADR, the complainant may file a complaint with the CRC Director as described in 29 CFR 38.69 through 29 CFR 38.71;
3. A party to any agreement reached under ADR may file a complaint within 30 days of the date on which the non-breaching party learns of an alleged breach; and
4. The CRC Director will evaluate the circumstances to determine whether the agreement has been breached. If the CRC Director 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 deadline for filing such a complaint

- D. The EO Officer will provide a final written notice to the complainant within 90 calendar days of the date on which the complaint was filed. The written notice must contain the following information:
1. For each issue raised in the complaint, a statement of either;
    - a. The determination and an explanation of the underlying reasons for the decision; or
    - b. A description of how the parties ultimately resolved the issue.
  2. Notice that the complainant has a right to file a complaint with the CRC Director within 30 calendar days of the date in which the Notice of Final Action was issued if he or she is dissatisfied with final action on the complaint.
- E. Based on the information provided by the complainant, the EO Officer may declare that there is no jurisdiction over the complaint, for one of the following reasons:
1. The basis for the complaint is not covered by the prohibitions of 29 CFR Part 38; or
  2. The complaint is against an agency, employer, organization, program, or individual within an entity that is not a WIOA Title I recipient, as defined in 29 CFR 38.4 (zz).

A Notice of Lack of Jurisdiction (with one or more of the above reasons) will be provided to the complainant immediately upon the EO Officer's discovery of such lack. This written notice must also inform the complainant that he or she has right to file a complaint with the CRC within 30 calendar days of receiving the notice.

## **.02 Alternative Dispute Resolution (ADR)/Mediation Process**

During the 90 day calendar 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 the 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.

- A. 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. The written notice must be dated and signed by the complainant or authorized representative and must also include the relief sought.
- B. A written confirmation identifying the date, time, and location of the initial mediation conference must be sent to all appropriate parties.
- C. 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.
- D. If resolution is reached under ADR/mediation, the agreement must be in writing. A copy of the signed agreement must be sent to the EO Officer.
- E. 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.
- F. 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/USDOL; however, the EO Officer must continue the investigation. The mediation process must be completed within 45 calendar days of the 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 process is not successful.

### **.03 Dissatisfaction with Notice of Final Action**

If, during the 90 calendar day period, the EO Officer issues a 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 calendar days after the date on which the complainant receives the Notice of Final Action.

### **.04 Failure to Provide Notice of Final Action**

If by the end of the 90-calendar 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 120 calendar days of the date in which the complaint was filed with the EO Officer.

#### **.05 Confidentiality**

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

- A. The fact that the complaint has been filed;
- B. The identity of the complainant(s);
- C. The identity of the individual respondents to the allegations;
- D. The identity of any person(s) who furnished information relating to or assisting in, the investigation of the complaint. Specifics of 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.

#### **.06 Confidentiality of the Complaint**

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

#### **.07 Intimidation and Retaliation Prohibition**

- A. It is prohibited to discharge, intimidate, retaliate, threaten, coerce, or discriminate against a person who has:
  - 1. Filed a complaint alleging violation of WIOA Section 188 or 29 CFR 38;
  - 2. Opposed a practice prohibited by the nondiscrimination and EO provisions of WIOA Section 188 and 29 CFR 38;
  - 3. Furnished information to, assisted or participated in any manner in an investigation, review, hearing or any other activity related to any of the following:

- a. Administration of the nondiscrimination and EO provisions of WIOA Section 188 and 29 CFR 38.
  - b. Exercise of authority of the provisions in WIOA Section 188 and 29 CFR 38.
  - c. Exercise of privilege secured by WIOA Section 188 and 29 CFR 38.
4. Otherwise exercise any rights and privileges under WIOA Section 188 and 29 CFR 38
- B. The sanctions and penalties in Section 188 of WIOA and 29 CFR 38 may be imposed against any recipient who engages in such retaliation or intimidation, or who fails to take appropriate steps to prevent such activity.

## **711 CORRECTIVE ACTIONS AND SANCTIONS**

ADES has developed the following procedures for obtaining prompt corrective actions when instances of noncompliance with WIOA Section 188 or 29 CFR 38 are found, that include applying sanctions, when necessary.

### **.01 Technical and Discrimination Violations**

Corrective and remedial action must be sought when any deficiency is identified as a result of a monitoring review or an EO complaint. Deficiencies may include both technical violations and/ or discrimination violations.

- A. Technical violations include deficiencies that do not include discrimination, and require written assurances from the state, Unemployment Insurance Administration, LWDAs, and ARIZONA@WORK partners. Technical violations may include, but are not limited to, failure to:
- 1. Post the required “EO is the Law” notice;
  - 2. Include an “EO is the Law” notice/ poster in the WIOA Title I participant’s program file and/or electronic file; and
  - 3. Include a statement signed by the participant that acknowledges the Complaint and Grievance Procedures in the participant’s program file or electronic file.
- B. Discrimination violations include, but are not limited to;

1. Discrepancies of disparate treatment (disparate treatment means intentionally treating members of a protected groups differently based on their protected status);
  2. Disparate impact (disparate impact means the use of policies or practices that are neutral may or may not appear neutral, but which have a disproportionate impact on members of protected groups, and/or are not job related and consistent with business necessity); and
  3. Failure to provide reasonable accommodations.
- C. Discrimination violations may require a conciliation agreement or assurance statement, provisions of which must include: making whole relief to include where appropriate; retroactive relief (e.g. back pay, front pay, retroactive benefits, training, any service discriminatorily denied, etc.) or prospective relief, (e.g. change of policy, training, development of new policy, or training on policy communication).

## **.02 Corrective Action Procedures**

After the EO Monitoring review, the EO Officer must complete the EO Monitoring Review Guide Report and include all discrepancies found during the EO Monitoring Review and the required corrective actions the recipient must take to come into compliance. The EO Officer must provide the report to the recipient.

- A. For each corrective action identified in the EO Monitoring Review Guide Report, the recipient must:
1. Submit their corrective action plan within 20 business days of receipt of the EO Monitoring Review Guide Report;
  2. Implement corrections to discrepancies in the EO Monitoring Review Report that must be designed to completely correct the violation and bring the recipient into compliance;
  3. Submit a written assurance that all of the discrepancies have been corrected and will not recur. The assurance must list the deficiency and the corrective action as specified in the written notification, describe the actions taken and the dates of those actions, state that the recipient or sub-recipient is taking steps and will continue to take steps to ensure that the deficiency does not recur, and certify that the assurance is signed by the highest-level official of the recipient or sub-recipient; and

4. If the discrepancies involve discrimination, a conciliation agreement is required. Remedial actions are designed to make an individual or individuals who have suffered injury or loss because of discrimination whole. A person or persons who are wronged must be restored to the status they would have expected if the discrimination had not occurred. In a finding of discrimination, the procedures must provide, where appropriate, for retroactive relief (including but not limited to, back pay) and prospective relief (including, but not limited to, training, policy development, and communication) to ensure the discrimination does not recur.
- B. When a recipient or sub-recipient is placed on a corrective or remedial action plan, the EO Officer overseeing the action plan must conduct a desk review and/or onsite visit, as appropriate, to ensure that the commitments to correct deficiencies described in the plan are satisfied and violations will not recur.
  - C. The EO Office will examine any instances of noncompliance during a follow-up onsite visit or as part of the next scheduled monitoring review of the recipient or sub-recipient. Recipients and sub-recipients who have a corrective or remedial action plan are required to provide follow-up reports for completing all corrective or remedial actions, which must be prepared and forwarded to the EO Officer overseeing the action plan, as directed.
  - D. When the EO Officer has determined the commitments in the corrective or remedial action plan are satisfied, he or she will close the monitoring review

### **.03 Sanction Procedures**

Sanctions penalize or censure a recipient when a recipient has failed resolve violations and comply with the EO and nondiscrimination requirements of WIOA Section 188 of 29 CFR 38.

- A. The EO Officer must issue a final determination in writing and take such actions as allowable by law to initiate the sanction process.

The final determination must include:

1. A statement of the efforts made to achieve voluntary compliance and a statement that those efforts have been unsuccessful;

2. A statement of those matters upon which the recipient and the EO officer continue to disagree;
  3. A list of any modifications to the finding of fact or conclusions the were set forth in the initial determination;
  4. A statement of the recipient's liability and, if appropriate the extent of that liability;
  5. A description of the corrective or remedial actions that the recipient must take to come into compliance; and
  6. A notice that if the recipient fails to come into compliance within 10 calendar days of the date on which it received the final determination is received, one or more the following consequences may result:
    - a. WIOA Title I funds may be withheld in whole or in part:
    - b. Applications for set-aside funds may be denied when the recipient is determined to be non-compliant with EO requirements in WIOA Section 188 and 29 CFR 38.
    - c. ADES may refer the case to the Arizona State Attorney General or the U.S. Department of Justice with a request to file suit against the recipient; or
    - d. ADES may take any other action against the recipient allowable by law.
- B. A recipient has the right to file a complaint with Director of the CRC when he or she is dissatisfied with the decision in the Notice of Final Action within 30 calendar days of the date on which the complainant received the Notice of Final Action at:

Director  
Civil Rights Center  
U.S. Department of Labor  
200 Constitution Ave, Northwest, Room N-4123  
Washington, D.C. 20210