# Kansas Department of Commerce
# Workforce Services
# Policy and Procedures Manual

**Policy Number:** 5-17-00

**Originating Office:** Commerce Regulatory Compliance

**Subject:** WIOA Section 188 Discrimination Complaint Processing Procedures

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**Program:** Workforce Innovation and Opportunity Act (WIOA)

**Purpose:** To transmit state policy and guidance regarding WIOA Discrimination Complaints for programs and activities that are part of the one-stop delivery system that are operated by one-stop partners listed in section 121(b) of WIOA, including those partners financially assisted by grant-making agencies other than the U.S. Department of Labor, to the extent that programs and activities are being conducted as part of the one-stop delivery system.

**References:** WIOA Section 188 and 29 CFR 38.69-38.97.

**Background:** State and local personnel are often responsible for processing different kinds of complaints. Depending upon the complaint, different procedures will apply. Generally, WIOA complaints can be divided into two categories: (1) program complaints, and (2) discrimination complaints. Program complaints are processed in accordance with U.S. Department of Labor, Employment and Training regulations. Discrimination complaints are processed in accordance with the Directorate of Civil Rights regulations.

**Actions:** All administrative entities participating in WIOA Title I activities in Kansas will utilize the procedures described in this policy for processing ***discrimination*** complaints. Non-discrimination complaints should be processed in accordance with Policy No. 1-11-01 *General WIOA Complaint Processing Procedures*. Advise all applicants for WIOA participation or employment, participants or employees of any WIOA Title I-funded entity, or any applicant for funding of the content of this policy and post on all official employee bulletin boards.

**Contact: Contact:** Questions should be directed to WIOA EO Officer John Ybarra, Commerce Regulatory Compliance, (785) 296-5092; TDD: 1-800-766-3777, e-mail: John.Ybarra@ks.gov.

**Attachments:**
U.S. Department of Labor (Civil Rights Center) Complaint Information Form

# WIOA Discrimination Complaint Processing Procedure

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# WIOA Discrimination Complaint Processing Procedures

## Prohibition Against Discrimination

The non-discrimination and equal opportunity provisions found in WIOA Section 188 and Title 29 CFR Part 38 prohibit discrimination on the bases of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, or political affiliation or belief, or, for beneficiaries, applicants, and participants only, on the basis of citizenship status, or participation in a program or activity that receives financial assistance under Title I of WIOA.

WIOA Section 188 incorporates the prohibitions against discrimination in programs and activities that receive federal financial assistance under certain civil rights laws, including:

1. *Age Discrimination Act of 1975*
2. *Section 188 of the Workforce Innovation and Opportunity Act of 2014*
3. *Sections 501, 503, 504, and 508 of the Rehabilitation Act of 1973*
4. *Title IX of the Education Amendments of 1972*
5. *Title VI of the Civil Rights Act of 1964*
6. *Title VII of the Civil Rights Act of 1964*
7. *Title II of the Americans with Disabilities Act*
8. *The Americans with Disabilities Act (ADA)and ADA Amendments Act of 2008*
9. *Executive Order 11246 (1965) Equal Employment Opportunity provisions for Government Contractors*

The Civil Rights Center interprets the non-discrimination provisions of WIOA to be consistent with the principles of these laws.

## Definition of a Discrimination Complaint

State and local recipients are required to process various complaints which can generally be divided into two categories: (1) program complaints, and (2) discrimination complaints. Program complaints and discrimination complaints can look similar as both types of complaints include an *issue*, which is something the individual is complaining about. However, a complaint is considered a discrimination complaint if it includes, as a reason for the unfair treatment, one of the prohibited bases listed in WIOA Section 188: race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, or political affiliation or belief, or, for beneficiaries, applicants, and participants only, on the basis of citizenship status, or participation in a program or activity that receives financial assistance under Title I of WIOA. A complaint cannot be processed as both a program complaint and as a discrimination complaint. Program complaints are processed in accordance with United States Department of Labor (USDOL), Employment and Training regulations. Discrimination complaints are processed in accordance with USDOL Civil Rights Center (CRC) regulations found at 29 CFR Parts 38.69-97.

## Discrimination Complaint Procedures Applicability

The Civil Rights Center (CRC) discrimination complaint processes apply to any recipient, as defined in 29 CFR Part 38.4; to programs and activities that are part of the one-stop delivery system and that are operated by one-stop partners listed in section 121(b) of WIOA, to the extent that the programs and activities are being conducted as part of the one-stop delivery system; and as provided in 29 CFR Part 38.18, to the employment practices of a recipient and/or one-stop partner, to the extent that the employment is in the administration of or in connection with programs and activities that are being conducted as part of the WIOA Title I or the one-stop delivery system.

The term "recipient" means any entity to which financial assistance under Title I of WIOA is extended, directly from USDOL or through the Governor or another recipient. Entities connected to the workforce development system may be recipients for purposes of Section 188 and these procedures even if they do not receive assistance in the form of money. For example, recipients subject to these procedures include entities with agreements, arrangements, contracts, sub-contracts, or other instruments for the provision of assistance or benefits under WIOA Title I. For the purpose of these discrimination complaint procedures, one-stop partners, as defined in section 121(b) of WIOA are treated as "recipients," and are subject to these non-discrimination and equal opportunity requirements. "Recipient" includes but is not limited to: State-level agencies that administer, or are financed in whole or in part, with WIOA Title I funds; State Workforce Agencies; State unemployment compensation agencies; State and Local Workforce Development Boards; Local Workforce Development Area (LWDA) grant recipients; One-Stop Operators; service providers including eligible training providers (ETP); On-the-Job Training (OJT) employers; Job Corps contractors and center operators; outreach and admissions agencies, placement agencies and other National Program recipients including: Migrant and Seasonal Farmworkers Programs, Native American Programs, National Dislocated Worker Grant Programs, and Youthbuild programs.

## Who May File a Discrimination Complaint

Any person or the person's representative who believes he or she, or any specific class of individuals, has been or is being discriminated against on the basis of race, color, religion, sex (including pregnancy, childbirth, and related medical conditions, transgender status, and gender identity), national origin (including limited English proficiency), age, disability, political affiliation or belief, citizenship status, or participation in any WIOA Title I-financially assisted program or activity as prohibited by WIOA or this part may file a complaint.

## Where to File a Discrimination Complaint

A complainant may file a complaint at the local level, State level, or with the Civil Rights Center Director (Director). Generally, a complaint must be filed within 180 days of the alleged discrimination or retaliation. However, for good cause shown, the Director may extend the filing time. The time period for filing is for the administrative convenience of CRC, and does not create a defense for the respondent.

A complainant may file a complaint by completing and submitting CRC's Complaint Information and Privacy Act Consent Forms, which may be obtained either from the State or local Equal Opportunity Officer, or from CRC at the address listed above. The forms are available electronically on CRC's Website, and in hard copy via postal mail upon request. The complaint form is Attachment A in this policy.

Complaints filed with the Civil Rights Center Director should be sent to the following address:

Civil Rights Center (CRC)
ATTENTION: Office of External Enforcement
U.S. Department of Labor, 200 Constitution Avenue, N.W.
Room N-4123
Washington, D.C. 20210
Email: CRCExternalComplaints@dol.gov
Voice: 202-693-6500
Fax: 202-693-6505
TRS: 7-1-1

**Required Contents of a Discrimination Complaint**

Each complaint must be filed in writing, either electronically or in hard copy, and must contain the following information:

1. The complainant's name, mailing address, and if available, email address (or another means of contacting the complainant).
2. The identity of the respondent (the individual or entity that the complainant alleges is responsible for the discrimination).
3. A description of the complainant's allegations. This description must include enough detail to allow the Civil Rights Center Director or the State or local recipient, as applicable, to decide whether;
    (a) CRC or the recipient as applicable, has jurisdiction over the complaint;
    (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 indicate noncompliance with any of the non-discrimination and equal opportunity provisions of WIOA or this part.
4. The written or electronic signature of the complainant or the written or electronic signature of the complainant's representative. Both the complainant and the respondent have the right to be represented by an attorney or other individual of their choice.

**Required Elements of a Recipient's Discrimination Complaint Processing Procedures**

The procedures that a State and local recipient adopts and publishes for processing complaints permitted under this policy and WIOA Section 188 must state that the recipient will issue a written Notice of Final Action on discrimination complaints within 90 days of the date on which the complaint is filed. At a minimum, the procedures must include the following elements:

1. Initial, written notice to the complainant that contains the following information:
    (a) An acknowledgment that the recipient has received the complaint; and
    (b) Notice that the complainant has the right to be represented in the complaint process;
    (c) Notice of rights contained in 29 CFR Part 38.35; and
    (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 20 CFR Parts 38.4(h) and (i), 38.34, and 38.36.
2. A written statement of the issue(s), provided to the complainant, that includes the following information:
    (a) A list of the issues raised in the complaint; and

(b) 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. A period for fact-finding or investigation of the circumstances underlying the complaint.

4. A period during which the recipient attempts to resolve the complaint. The methods available to resolve the complaint must include alternative dispute resolution (ADR), as described in paragraph (c) of this section;

5. A written Notice of Final Action, provided to the complainant within 90 days of the date on which the complaint was filed, that contains for each issue raised in the complaint, a statement of either:
   (a) The recipient'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
   (c) Notice that the complainant has a right to file a complaint with CRC within 30 days of the date on which the Notice of Final Action is issued if the complainant is dissatisfied with the recipient's final action on the complaint.

6. The procedures the State and local recipient adopts must provide for alternative dispute resolution (ADR). The recipient's ADR procedures must provide that:
   (a) The complainant may attempt ADR at any time after the complainant has filed a written complaint with the recipient, 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 file a complaint with the Civil Rights Center Director in the event the agreement is breached. In such circumstances, the following rules will apply:
      - 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;
      - The Director must evaluate the circumstances to determine whether the agreement has been breached. If the Director determines that the agreement has been breached, the complaint will be reinstated and processed in accordance with the recipient's procedures.
      - If the parties do not reach an agreement under ADR, the complainant may file a complaint with the Director as described in 29 CFR Parts 38.69 through 38.71.

**Recipient Obligations When it Determines That It Has No Jurisdiction Over a Complaint**

If a State or local recipient determines that it does not have jurisdiction over a complaint, it must notify the complainant, in writing, within five (5) business days of making such determination. This Notice of Lack of Jurisdiction must include a statement of the reasons for that determination; and notice that the complainant has a right to file a complaint with CRC within 30 days of the date on which the complainant receives the Notice.

**If the Complainant is Dissatisfied After Receiving a Notice of Final Action**

If the State or local recipient issues its Notice of Final Action before the 90-day period ends, but the complainant is dissatisfied with the recipient's decision on the complaint, the complainant or the complainant's representative may file a complaint with the Civil Rights Center Director within 30 days after the date on which the complainant receives the Notice. Additionally, if by the end of 90 days from the date on which the complainant filed the complaint, the State or local recipient has failed to issue a Notice of Final Action, the complainant or the complainant's representative may file a complaint with the Civil Rights Center Director within 30 days of the expiration of the 90-day period. In other words, the complaint must be filed with CRC within 120 days of the date on which the complaint was filed with the State or local recipient.

## Civil Rights Center (CRC) Determination Procedures

If a complaint will not be accepted, the Civil Rights Center Director must notify the complainant, in writing, about that fact, and provide the complainant the Director's reasons for making that determination. If the CRC accepts the complaint for resolution, the Director must notify in writing the complainant, the respondent, and the grant making agency. The notice must state that the complaint will be accepted; identify the issues over which CRC has accepted jurisdiction; and explain the reasons why any issues were rejected. Both the complainant and the respondent, or their representative, may contact CRC for information about the complaint. The Director will determine what information, if any, about the complaint will be released and may offer the option of alternative dispute resolution (ADR) at any time after a complaint has been filed under Section 38.69 as deemed appropriate.

If the Director finds reasonable cause to believe that the respondent has violated the nondiscrimination and equal opportunity provisions of WIOA or this part, the Director must issue an Initial Determination which must include: the specific findings of the investigation; the corrective or remedial action that USDOL proposes to the respondent, under Section 38.90; the time by which the respondent must complete the corrective or remedial action; whether it will be necessary for the respondent to enter into a written agreement under Sections 38.91 through 38.93; and the opportunity to engage in voluntary compliance negotiations. If the Director determines that there is no reasonable cause to believe that a violation has taken place, the Director must issue a Final Determination under Section 38.96. The Final Determination represents the Department's final agency action on the complaint.

## Local Workforce Development Area (LWDA) Discrimination Complaint Filing Responsibilities

All local workforce development areas (LWDAs) must designate an Equal Opportunity Officer who is responsible for developing and publishing local area procedures for processing discrimination complaints under 29 CFR Parts 38.72 through 38.73, including tracking the discrimination complaints filed against the recipient, developing procedures for investigating and resolving discrimination complaints filed against the recipient, ensuring that those procedures are followed, and making available to the public, in appropriate languages and formats; the procedures for filing a complaint; conducting outreach and education about equal opportunity and non-discrimination requirements and how an individual may file a discrimination complaint.

The LWDA Equal Opportunity Officer should follow the procedures listed above in the section titled *"Required Elements of a Recipient's Discrimination Complaint Processing Procedures"* and also found at 29 CFR Part 38.72 to resolve discrimination complaints. When a discrimination complaint is filed, the LWDA Equal Opportunity Officer should communicate with the State Equal Opportunity Officer to receive guidance in resolving the complaint. Upon receiving a discrimination complaint, the LWDA Equal Opportunity Officer should review the submitted complaint form to assure completeness and then forward a copy of the completed form and relevant documents to the State Equal Opportunity Officer at the following address:

WIOA Equal Opportunity Officer
John M. Ybarra
Kansas Department of Commerce
Legal Services
1000 S.W. Jackson Street, Suite 100
Topeka, Kansas 66612-1354
785-296-5092 Relay: 711
John.Ybarra@ks.gov

**Prohibition Against Intimidation and Retaliation**

A State or local recipient must not discharge, intimidate, retaliate, threaten, coerce, or discriminate against any individual because the individual has filed a complaint alleging a violation of Section 188 of WIOA or this part; opposed a practice prohibited by the non-discrimination and equal opportunity provisions of WIOA or this part; furnished information to, or assisted or participated in any manner in, an investigation, review, hearing, or any other activity related to administration of the non-discrimination and equal opportunity provisions of WIOA or Title 29 CFR Part 38. The sanctions and penalties contained in these discrimination complaint procedures may be imposed against any recipient that engages in any such retaliation.

**Attachment A: United States Department of Labor Civil Rights Center Complaint Information Form**

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

Adobe Acrobat
PDFXML Document