

# South Dakota’s WIOA Title I Non-Discrimination Plan



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## Element 5 – Section 504 Compliance

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## Element 5 – Section 504 Compliance

*WIOA Section 188; Section 504 of the Rehabilitation Act, as amended; and their implementing regulations, including but not limited to 29 CFR 38.7-9 and Subparts B and C of 29 CFR 32*

### I. Element 5 Criteria

#### A. Prohibited Discriminatory Actions Based on Disability

DLR communicates the specific discriminatory actions based on disability that are prohibited by these parts. WIOA Section 188; Section 504 of the Rehabilitation Act; 29 CFR 32

1. In providing any aid, benefits, services, or training under a DLR or WIOA Title I- financially assisted program and/or activity, DLR must not, directly or through contractual, licensing, or other arrangements, on the ground of disability:
  - a. Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefits, services, or training;
  - b. Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefits, services, or training that is not equal to that afforded others;
  - c. Provide a qualified individual with a disability with an aid, benefit, service or training that is not as effective in affording equal opportunity to obtain the same results, to gain the same benefits, or to reach the same level of achievement as provided to others;
  - d. Provide different, segregated, or separate aid, benefits, services, or training to individuals with disabilities, or to any class of individuals with disabilities, unless such action is necessary to provide qualified individuals with disabilities with aid, benefits, services or training that are as effective as those provided to others;
  - e. Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards; or
  - f. Otherwise limit a qualified individual with a disability in employment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, service, or training.
2. DLR and its sub-recipients must not, directly or through contractual licensing, or other arrangements, aid or perpetuate discrimination against qualified individuals with disabilities by providing significant assistance to an agency, organization, or person that discriminates on the basis of disability in providing any aid, benefits, services, or training to registrants, applicants, or participants.
3. DLR and its sub-recipients must not deny a qualified individual with a disability the opportunity to participate in a DLR or WIOA Title I-financially assisted programs and/or activities despite the existence of permissibly separate or different programs or activities.
4. DLR and its sub-recipients must administer a DLR or a WIOA Title I-financially assisted program and activity in the most integrated setting appropriate to the needs of qualified individuals with disabilities.
5. DLR and its sub-recipients must not, directly or through contractual, licensing, or other arrangements, use standards, procedures, criteria, or administrative methods:

- a. Having the purpose or effect of subjecting qualified individuals with disabilities to discrimination on the ground of disability;
  - b. Having the purpose or effect of defeating or substantially impairing accomplishment of the objectives of DLR or WIOA Title I-financially assisted programs and/or activities with respect to individuals with disabilities; or
  - c. Perpetuating the discrimination of another entity if both entities are subject to common administrative control or are agencies of the same state.
6. DLR, in the selection of contractors, will not use criteria that subject qualified individuals with disabilities to discrimination on the basis of disability.
  7. DLR will not impose or apply eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any aid, benefit, service, training, program, or activity, unless such criteria can be shown to be necessary for the provision of the aid, benefit, service, training, program, or activity being offered. DLR LWIOAs use the statewide eligibility policy (See Element 5, Exhibit C and D).
  8. DLR must not place a surcharge on a particular individual with a disability, or any group of individuals with disabilities, to cover the costs of measures, such as the provision of auxiliary aids or program accessibility, that are required to provide that individual or group with the nondiscriminatory treatment required by WIOA Title I or this part.
  9. DLR is not required to provide any of the following to individuals with disabilities:
    - a. Personal devices, such as wheelchairs;
    - b. Individually prescribed devices, such as prescription eyeglasses or hearing aids;
    - c. Readers for personal use or study; or
    - d. Services of a personal nature, including assistance in eating, toileting, or dressing.
  10. Nothing in this part requires an individual with a disability to accept an accommodation, aid, benefit, service, training, or opportunity provide under WIOA Title I or this part that such individual chooses not to accept.
  11. Nothing in this part authorizes the representative or guardian of an individual with a disability to decline food, water, medical treatment, or medical services for that individual.

## **B. Reasonable Accommodation and Modification for Individuals with Disabilities**

1. DLR will provide reasonable accommodation to qualified individuals with disabilities who are applicants, registrants, eligible applicants/registrants, participants, employees, or applicants for employment, unless providing the accommodation would cause undue hardship.
  - a. To ensure persons with disabilities have access to all benefits offered, DLR has designated an Americans with Disabilities Act (ADA) Coordinator. The ADA Coordinator is responsible for:
    - i. Interpret ADA regulations regarding equal access for people with disabilities;
    - ii. Monitor and improve the physical access to all of DLR locations;
      - a) The ADA Coordinator will perform onsite monitors of each of DLR facility every three years. The onsite monitor will include going through the ADA Checklist (See Element 5, Exhibit A).
    - iii. Provide guidance to staff regarding issues relating to disabilities and accommodation.

DLR One-Stop Career Center certification assessment policy requires an ADA Accessibility Study to be completed before being certified (see Element 5, Exhibit B).

- b. In those circumstances where DLR believes the proposed accommodation would cause undue hardship, DLR has the burden of proving the accommodation would result in such hardship.
  - i. DLR must make the decision the accommodation would cause such hardship only after considering all factors listed in the definition of “undue hardship” in 29 CFR 38.4.
  - ii. The decision must be accompanied by a written statement of reason(s) for reaching the conclusion. DLR must provide a copy of the statement of reason(s) to the individual(s) who requested the accommodation.
  - iii. If a requested accommodation would result in undue hardship, DLR must take any other action that would not result in such hardship, but would nevertheless ensure, to the maximum extent possible, individuals with disabilities receive the aid, benefits, services, training, or employment provided by DLR.
  - iv. The EO Officer reviews decisions of accommodation and modification requests during desk audits, on-site monitoring reviews, and DLR job service office internal compliance audits.
2. DLR must make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless making the modifications would fundamentally alter the nature of the service, program, or activity.
  - a. To ensure persons with disabilities have access to all benefits offered, the State EO Officer conducts desk and on-site compliance audits of each job service office to ensure compliance with this part (See Element 7, Exhibit A).
  - b. In those circumstances where DLR believes the proposed modification would fundamentally alter the program, activity, or service, DLR has the burden of proving the modification would result in such an alteration.
    - i. DLR must make the decision that the modification would result in such an alteration only after considering all factors listed in the definition of “fundamental alteration” in 29 CFR 38.4. The decision must be accompanied by a written statement of reasons for reaching the conclusion. DLR must provide a copy of the statement of reasons to the individual or individuals who requested the modification.
    - ii. If the modification would result in a fundamental alteration, DLR must take any other action that would not result in such an alteration, but would nevertheless ensure, to the maximum extent possible, individuals with disabilities receive the aid, benefits, services, training, or employment provided by DLR.
    - iii. The EO Officer reviews decisions of accommodation and modification requests during desk audits, on-site monitoring reviews, and DLR job service internal compliance audits.
3. Regulations implementing Section 504 of the Rehabilitation Act of 1973 and regulations implementing requirements at Section 29 CFR Part 32 stipulate entities receiving financial assistance from the US Department of Labor (USDOL) must conduct a self-evaluation of their policies and practices to assess their programs’ accessibility. Programs shall be accessible to persons with mobility impairments, hearing and vision impairments, and mental problems, and any other conditions, which substantially limit a major life activity. DLR developed an evaluation form based on the tool developed by the CRC to assist with this requirement (See Element 7, Exhibit A).

### **C. Responsibilities to Communicate with Individuals with Disabilities**

DLR must take appropriate steps to ensure communications with beneficiaries, registrants, applicants, eligible applicants/registrants, participants, applicants for employment, employees, and members of the public who are individuals with disabilities are as effective as communications with others.

1. DLR must take responsibility in serving persons with disabilities. DLR must furnish appropriate auxiliary aids or services where necessary to afford individuals with disabilities an equal opportunity to participate in, and enjoy

the benefits of DLR and WIOA Title I-financially assisted programs and/or activities. In determining what type of auxiliary aid or service is appropriate and necessary, DLR must give primary consideration to the requests of the individual with a disability and may include, but are not limited to, sign language, interpreters, readers, adaptive equipment, taped materials, relay services, or TDD/TTYs for individuals with hearing impairments.

2. DLR is required to make reasonable accommodations for qualified applicants and employees with disabilities who can perform the essential functions of the job; do not discriminate against persons with a history of disabilities or those regarded as disabled; and prohibit discrimination against persons with disabilities in all employment practices including recruitment, hiring, training, job assignment, pay, layoff, firing, promotion, leave, benefits, and all other employment related activities. When alternative provisions must be made, they are provided in the most integrated setting possible. DLR takes appropriate steps to ensure communication with applicants, eligible applicant, participants, employees, applicants for employment, and members of the public who are persons with disabilities, are as effective as communication with others.
3. DLR must ensure interested individuals, including individuals with visual or hearing impairments, can obtain information as to the existence of accessible services, activities, and facilities. Where DLR communicates by telephone with beneficiaries, registrants, applicants, eligible applicant/registrants, participants, applicants for employment, and/or employees, DLR must use telecommunications devices for individuals with hearing impairments such as TDD/TTYs, or equally effective communications systems, such as telephone relay services.
4. The international symbol for accessibility is used at each primary entrance of an accessible facility. Signage is provided at the primary entrance to each inaccessible facility directing users to a location at which they can obtain information about accessible facilities.
5. DLR is required to evaluate job qualifications regularly to ensure the qualifications do not discriminate on the ground of disability. DLR may, however, make pre-employment inquiry into an applicant's ability to perform job-related functions.

#### **D. Procedures for Maintaining Confidentiality of Disability-Related Information**

1. Any medical or disability-related information obtained about a particular individual, including information that could lead to the disclosure of a disability, must be collected on separate forms. All such information, whether in hard copy, electronic, or both, must be maintained in one or more separate files, apart from any other information about the individual, and treated as confidential. Whether these files are electronic or hard copy, they must be locked or otherwise secured (for example, through password protection).
2. Persons in the following categories may be informed about an individual's disability or medical condition and have access to the information in related files under the following listed circumstances:
  - a. Program staff who are responsible for documenting eligibility, where disability is an eligibility criterion for a program or activity;
  - b. First aid and safety personnel who need access to underlying documentation related to a participant's medical condition in an emergency;
  - c. Government officials engaged in enforcing these provisions, any other laws administered by the U.S.DOL, or any other Federal laws; and
  - d. Supervisors, managers, and other necessary personnel may be informed regarding restrictions on the activities of individuals with disabilities and regarding reasonable accommodations for such individuals.
3. Pre-employment or employment medical inquiries apply to all employment and employment related training, are not made before a conditional offer of employment or participation, and are made to all in same jobs or training programs, except as provided in paragraphs a. and b. of this section:

- a. DLR may not conduct pre-employment medical examinations or make pre-employment inquiry of an applicant for employment or training as to whether the applicant is a handicapped person or as to the nature of severity of a handicap. DLR may, however, make pre-employment inquiry into an applicant's ability to perform job-related functions.
- b. When DLR is taking remedial action to correct the effects of past discrimination, when DLR is taking voluntary action to overcome the effects of conditions that resulted in limited participation in its federally-assisted programs and/or activities, or when DLR is taking affirmative action pursuant to section 503 of the Act, DLR may invite applicants for employment or training to indicate whether and to what extent they are handicapped if:
  - i. DLR states clearly on any written questionnaire used for this purpose or makes clear orally, if no written questionnaire is used, the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts.
  - ii. DLR states clearly the information is being requested on a voluntary basis, it will be kept confidential as provided in paragraph D. of this section, and refusal to provide it will not subject the applicant or employee to any adverse treatment and it will be used only in accordance with this part.
- c. An employer who routinely requires medical examinations as part of the employment selection process must demonstrate each of the requirements of this subsection are met:
  - i. The medical examination shall be performed by a physician qualified to make functional assessment of individuals in a form, which will express residual capacity for work or training. Such an assessment does not require clinical determinations of disease or disability, but shall provide selecting or referring official's sufficient information regarding any functional limitations relevant to proper job placement or referral to appropriate training programs. Factors which may be assessed may include, for example, use of limbs and extremities, mobility and posture, endurance and energy expenditure, ability to withstand various working conditions and environments, use of senses and mental capacity;
  - ii. The results of the medical examination shall be specific and objective so as to be susceptible to review by independent medical evaluators and shall be transmitted to the applicant or employee at the same time as the employing official;
  - iii. The results of the medical examination shall not be used to screen out qualified applicants and employees but to determine proper placement and reasonable accommodation. The employing official using physical or mental information obtained pursuant to this section should be familiar with physical or mental activities involved in performing the job, and the working conditions and environment in which it is carried out. If the applicant is being considered for a variety of jobs having different requirements or skills, the employing official should make a functional assessment of the physical or mental demands of the jobs in order to match the applicant with the most suitable vacancy;
  - iv. All of the potential employees for the jobs are subjected to the medical examinations;
  - v. The procedures for using medical examinations or the medical information shall be constructed in the following manner:
    - a) A conditional job offer was made or the individual was conditionally placed in a job pool, or conditionally placed on an eligibility list prior to the medical examination being performed; or
    - b) The results of the medical examination were considered by the employing official only after a conditional decision to make a job offer or the individual has been placed conditionally in a job pool or conditionally placed on an eligibility list; the medical results were the last factor evaluated by the employing officials before a final decision to make an offer of employment was made.
  - vi. Unless a conditional job offer is made prior to the medical examination, all potential employees for the job shall be informed at the time of the medical examination that:

- a) The results of the medical examination are the last factor evaluated by the employing official before a final decision to make an offer of employment is made, and
- b) The medical examination results shall be transmitted to the employing official and the applicant only after a conditional decision of a job offer has been made.

## **II. Element 5 Documentation:**

Exhibit A – ADA Physical Checklist

Exhibit B – One-Stop Certification

Exhibit C – 4.1 Wagner-Peyser, Adult, and Dislocated Worker Eligibility

Exhibit D – 4.3 Youth Eligibility

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