

South Dakota's WIOA Title I Non-Discrimination Plan



123 W. Missouri Ave., Pierre, SD 57501
dlr.sd.gov

Element 8 – Complaint Processing Procedures

29 CFR 38.70 through 38.89

Table of Contents

Element 8 – Complaint Processing Procedures	Error! Bookmark not defined.
I. Element 8 Criteria	Error! Bookmark not defined.
A. Required Elements of Discrimination Complaint Processing Policy and Procedure	Error! Bookmark not defined.
1. Initial Written Notice	Error! Bookmark not defined.
2. Written Statement of the issue(s).....	Error! Bookmark not defined.
3. A Period for Fact-finding or Investigation	Error! Bookmark not defined.
4. Attempts to Resolve the Complaint	Error! Bookmark not defined.
5. Written Notice of Final Action	Error! Bookmark not defined.
6. Initial Determinations	Error! Bookmark not defined.
7. Final Determination	Error! Bookmark not defined.
1. Sanctions	Error! Bookmark not defined.
II. Element 8 Documentation	4

Element 8 – Complaint Processing Procedures

29 CFR 38.70 through 38.89

I. Element 8 Criteria

The Department of Labor and Regulation (DLR) has developed complaint procedures applicable to all WIOA Title I discrimination complaints (see Element 8, Exhibit A). DLR requires individuals filing a complaint use the ETA 8429 form (see Element 8, Exhibit B). Entities operating federal or state funded programs for DLR are also allowed to use the procedures.

A. Required Elements of Discrimination Complaint Processing Policy and Procedure

1. Initial Written Notice

Initial written notice to the complainant, within ten (10) days of receiving the complaint, containing the following information:

- a. An acknowledgement DLR has received the complaint.
- b. The complainant's right to be represented in the complaint process.
- c. The DLR policy to initially attempt resolution of the complaint through mediation, which is an alternative dispute resolution (ADR). The mediation process is explained to the complainant.

2. Written Statement of the issue(s)

A written statement of the issue(s), provided to the complainant, including the following information:

- a. A list of issues raised in the complaint; and
- b. For each issue, a statement whether DLR will accept the issue for investigation or reject the issue, and the reasons for each rejection.

3. A Period for Fact-finding or Investigation

A period for fact-finding or investigation of the circumstances underlying the complaint must be completed within sixty (60) calendar days of the filing of the complaint.

4. Attempts to Resolve the Complaint

Within ten (10) days of filing of the complaint, the complainant is informed of the DLR policy to initially attempt resolution of the complaint through mediation, which is an alternative dispute resolution (ADR). The complainant has twenty (20) calendar days of filing of the complaint to accept or reject the offer of mediation.

5. Written Notice of Final Action

A written Notice of Final Action, provided to the complainant must be completed WITHIN NINETY (90) CALENDAR DAYS of the filing of the complaint and contains the following information:

- a. For each issue raised in the complaint, a statement of either:
 - i. DLR's decision of the issue and an explanation of the reasons underlying the decision or
 - ii. A description of the way the parties resolved the issue.
- b. Notice the complainant has a right to file a complaint with the Civil Rights Center within 30 days of the date on which the Notice of Final Action is issued if he or she is dissatisfied with the final action by DLR.

6. Initial Determinations

- a. At the conclusion of an investigation of the complaint, the EO Officer must take the following actions:

- i. Determine whether there is reasonable cause to believe the respondent has violated the non-discrimination and equal opportunity provisions of WIOA or 29 CFR 38; and
- ii. Notify the complainant, the respondent, and the grant making agency, in writing, of the determination.
- b. Corrective or remedial actions may be imposed with an Initial Determination when the EO Officer determines, after review of a complaint, a violation of the nondiscrimination and equal opportunity provisions of WIOA or 29 CFR 38. The Initial Determination must include the specific steps the grant applicant or recipient, as applicable, must take within a stated period of time in order to achieve voluntary compliance. Such steps must include:
 - i. Actions to end and/or redress the violation of nondiscrimination and equal opportunity provisions of WIOA or 29 CFR 38.
 - ii. Make whole relief where discrimination has been identified, including as appropriate: back pay or other monetary relief; hire or reinstatement; retroactive seniority; promotion; or benefits or other services discriminatorily denied.
 - iii. Such other remedial or affirmative relief as the EO Officer deems necessary, including but not limited to outreach, recruitment, and training designed to ensure equal opportunity.
- c. Monetary relief may not be paid from Federal funds.

7. Final Determination

- a. The Final Determination will contain the following information:
 - i. A statement of the efforts made to achieve voluntary compliance, and a statement that those efforts have been unsuccessful;
 - ii. A statement of those matters upon which the parties continue to disagree;
 - iii. A list of any modifications to the findings of fact or conclusions that were set forth in the Initial Determination, Notice to Show Cause, or Letter of Findings;
 - iv. A statement of the sub-recipients, contractors, and other service providers' (such as eligible training providers) liability, and, if appropriate, the extent of that liability;
 - v. A description of the corrective or remedial actions the grant applicant or recipient must take to come into compliance;
 - vi. A notice that if the grant applicant or recipient fails to come into compliance within 10 days of the date on which it receives the Final Determination, one or more of the following consequences may result:
 - vii. After the sub-recipients, contractors, and other service providers (such as eligible training providers) are given the opportunity for a hearing, its WIOA funds may be terminated, discontinued, or withheld in whole or in part, or its application for such funds may be denied, as appropriate;
 - viii. DLR may refer the case to a DLR staff attorney with a request to file suit against the sub-recipients, contractors, and other service providers; or
 - ix. DLR may take any other actions against the sub-recipients, contractors, and other service providers provided by law.
 - x. A notice of the grant applicant's or recipient's right to request a hearing under the procedures described in 29 CFR 38.111; and
 - xi. A determination of DLR, entity's authorized signatory, and the violating sub-recipient, contractors, and other service provider's liability, if any.

1. Sanctions

- a. If compliance has not been achieved after issuance of a Final Determination or a Notification of Breach of Conciliation Agreement, DLR may apply sanctions or judicial enforcement as follows:
 - i. After opportunity for a hearing, suspend, terminate, deny or discontinue the WIOA financial assistance, in whole or in part;
 - ii. Refer the matter to a DLR staff attorney or CRC with a recommendation that an appropriate civil action be instituted; or
 - iii. Take such action as may be provided by law.

- b. In addition to sanctions and judicial enforcement, if there is no voluntary compliance there may be a deferral of new grants. When the applicable hearing procedures have been initiated against a particular recipient, DLR or the CRC may defer action on that recipient's applications for new WIOA financial assistance until a Final Decision as required has been rendered. Deferral is not appropriate when WIOA financial assistance is due and payable under a previously approved application. The following criteria are applied to determine New WIOA financial assistance:
 - i. New WIOA financial assistance includes all assistance for which an application or approval, including renewal or continuation of existing activities, or authorization of new activities, is required during the deferral period.
 - ii. New WIOA financial assistance does not include assistance approved before the beginning of proceedings, or increases in funding because of changed computations of formula awards.

II. Element 8 Documentation

Exhibit A – The DLR Discrimination Complaint Policy and Procedure

Exhibit B – ETA 8429 Complaint/Apparent Violation Form

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