

**Element 5: Compliance with section 504 of the Rehabilitation Act of 1973, as amended and 29 CFR Part 37**

*Reference: 29 CFR 37.54 (d) (2) (v)*

*In this element, the State should address how it and its recipients are complying and will continue to comply with the requirements of the disability related requirements of WIOA section 188; Section 504 of the Rehabilitation Act of 1973, as amended; and their implementing regulations, including but not limited to 29 CFR 37.7, 37.8, and 37.9 and Subparts B and C of 29 CFR Part 32.*

Narrative:

The state of South Dakota complies and will continue to comply with all of the disability requirements of 29 CFR Part 37; Section 188 of WIOA; Section 504 of the Rehabilitation Act of 1973, as amended; and the Americans with Disabilities Act (ADA) of 1990; and their implementing regulations.

The DLR communicates the specific discriminatory actions based on disability that are prohibited by these parts:

- A. In providing any aid, benefits, services, or training under a DLR or WIOA Title I- financially assisted program and/or activity, a recipient must not, directly or through contractual, licensing, or other arrangements, on the ground of disability:
- 1) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefits, services, or training;
  - 2) 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;
  - 3) 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 that provided to others;
  - 4) 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;

- 5) Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards; or
  - 6) 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.
- B. A recipient 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.
- C. A recipient must not deny a qualified individual with a disability the opportunity to participate in DLR or WIOA Title 1-financially assisted programs and/or activities despite the existence of permissibly separate or different programs or activities.
- D. A recipient must administer DLR or WIOA Title I-financially assisted programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.
- E. A recipient must not, directly or through contractual, licensing, or other arrangements, use standards, procedures, criteria, or administrative methods;
- 1) That have the purpose or effect of subjecting qualified individuals with disabilities to discrimination on the ground of disability;
  - 2) That have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the DLR or WIOA Title I-financially assisted programs and/or activities with respect to individuals with disabilities; or
  - 3) That perpetuate the discrimination of another entity if both entities are subject to common administrative control or are agencies of the same state.

Recipients must take responsibility in serving persons with disabilities. A recipient 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 the DLR and WIOA Title I-financially assisted programs and/or activities. In determining what type of auxiliary aid or service is appropriate and necessary, such recipient 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.

Recipients are 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. Recipients take appropriate steps to ensure that 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.

Recipients 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 a recipient communicate by telephone with beneficiaries, registrants, applicants, eligible applicant/registrants, participants, applicants for employment, and/or employees, the recipient must use telecommunications devices for individuals with hearing impairments such as TDD/TTYs, or equally effective communications systems, such as telephone relay services.

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.

Recipients are required to evaluate job qualifications regularly to ensure that the qualifications do not discriminate on the ground of disability. A recipient may, however, make pre-employment inquiry into an applicant's ability to perform job-related functions.

In accordance with Section 188 of the WIOA; Section 504 of the Rehabilitation Act of 1973, as amended the ADA of 1990; and their implementing regulations (29 CFR Part

37 and 29 CFR Part 32), 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.

- A. Except as provided in paragraphs B. and C. of this section, a recipient 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. A recipient may, however, make pre-employment inquiry into an applicant's ability to perform job-related functions.
  
- B. When a recipient is taking remedial action to correct the effects of past discrimination, when a recipient 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 a recipient is taking affirmative action pursuant to section 503 of the Act, the recipient may invite applicants for employment or training to indicate whether and to what extent they are handicapped if:
  - 1) The recipient states clearly on any written questionnaire used for this purpose or makes clear orally, if no written questionnaire is used, that the information requested is intended for use solely in connection with its remedial action obligations or its voluntary or affirmative action efforts.
  - 2) The recipient states clearly that the information is being requested on a voluntary basis, that it will be kept confidential as provided in paragraph D. of this section, that refusal to provide it will not subject the applicant, employee to any adverse treatment, and that 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 that each of the requirements of this subsection are met:
  - 1) 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 officials 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 an posture, endurance and energy expenditure, ability to withstand various working conditions and environments, use of senses and mental capacity;

- 2) The results of the medial examination shall be specific and objective so as to be susceptible to review by independent medial evaluators and shall be transmitted to the applicant or employee at the same time as the employing official;
- 3) 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;
- 4) All of the potential employees for the jobs are subjected to the medical examinations;
- 5) The procedures for using medical examinations or the medical information shall be constructed in such a manner that:
  - 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 make.
- 6) 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.
- D. Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms that shall be accorded confidentially as medical records, except that;
- 1) Employing officials may obtain the information after making a conditional decision to make a job offer to the applicant or the applicant was placed conditionally in a job pool or placed conditionally on an eligibility list.
  - 2) Supervisors and managers may be informed regarding restrictions on the work or duties of qualified handicapped persons and regarding necessary accommodations;
  - 3) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and
  - 4) Government officials investigating compliance with the Act shall be provided information upon request.

To ensure that persons with disabilities have access to all benefits offered, the State EO Officer conducts desk audit compliance review and on-site compliance reviews of facilities. The monitors include a review of architectural accessibility. This monitoring includes both program accessibility and site accessibility. Included are review of employment documents and qualification requirements to ensure that these requirements do not arbitrarily screen out disabled individuals. (See MOA Element 7 documentation.)

Regulations implementing Section 504 of the Rehabilitation Act of 1973 and regulations implementing requirements at Section 29 CFR Part 32 stipulate that entities receiving financial assistance from the U S 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 recipients with this requirement. (See MOA Element 5 documentation.)

To ensure that all persons have access to all benefits offered through DLR or WIOA Title I-financially assisted programs and/or activities, DLR and its sub-recipients must provide reasonable accommodations and modifications for individuals with disabilities. Through initial and continuing EO training, the management of the DLR Local Offices and other DLR/WIOA sub-recipients enhance their knowledge and skills to make appropriate decisions pertinent to reasonable accommodation/modification. The EO Officer reviews decisions of accommodation and modification requests during desk audits, on-site monitoring reviews, and DLR Local Offices internal compliance audits.

An individual would submit a written request for accommodation/modification to the manager/director of the DLR Local Office or other DLR sub-recipient. A copy of the decision, accompanied by a written statement of the recipient's reasons for reaching that conclusion, must be provided to the individual who made the request.

Title 29 CFR Part 37 does not require a recipient to take any action that it can demonstrate would result in a fundamental alteration of the nature of a service, program, or activity or in undue financial and administrative burdens. However, the recipient has the burden of proving that the action would result in such an alteration. The recipient can only make the decision that an action would result in such an alteration after consideration of the factors listed in the definition of "fundamental alteration" in 29 CFR 37.4. If an action required to comply with this section would result in such an alteration or burden, the recipient must take any other action that would not result in such an alteration or such burdens; but would nevertheless ensure that, to the maximum extent possible, persons with disabilities receive the aid, benefits, services, or training provided by the recipient.

Documentation:

See attachments.