

Element 8. Complaint Processing Procedures

Reference: 29 CFR 37.54 (d) (1) (v)

In this element, the State should address how it and its recipients are complying and will continue to comply with the requirements of 29 CFR 37.76 through 37.79 regarding complaint processing procedures.

Narrative:

The state of South Dakota complies and will continue to comply with the requirements of 29 CFR Part 37 related to discrimination complaint processing procedures. The DLR has established the procedures that will provide for the prompt and equitable resolution of discrimination complaints and safeguard the confidentiality of the complaint and any actions resulting from it. The orientation and refresher training provided by the EO Officer for DLR staff and grantee/sub-recipient staff identifies the difference between programmatic complaints and complaints based on discrimination.

It is against the law for recipients of federal financial assistance to discriminate on the following bases:

- Against any individual in the United States on the basis of race, color, religion, sex, national origin, age disability, political affiliation or belief, pregnancy, childbirth, and related medical conditions in accordance with the Pregnancy Discrimination Act of 1978 and related case law; and,
- Against any beneficiary of programs financially assisted under Title I of the Workforce Investment Act of 1998 (WIOA), on basis of beneficiary's citizenship/status as a lawfully admitted immigrant authorized to work in the United States, or his or her participation in any Title I-financially assisted program or activity.

In accordance with 20 CFR 658, a standardized, statewide Employment Security (ES) Complaint System has been implemented. More specifically, Part 658- Administrative Provisions Governing the Job Service (now DOL Local Office System, Subpart E, 658.400 through 658.426, outlines both state and federal guidance for actions to be taken on specified complaints.

Furthermore, Subparts F, G, and H of 658 outline discontinuation of services to employers, review and assessment of State agency compliance with ES regulations, and Federal application of remedial action to State agencies, respectively.

It is the DLR State Monitor Advocate's duty to ensure that these regulations are known and carried out by state DOL Local Offices.

All DLR state employees' complaints are submitted to the South Dakota Bureau of Personnel for processing.

The Department of Labor EO Officer has the following discrimination complaint procedure printed and available to all grant recipients, applicants, participants, staff, and applicants for employment. Technical assistance and training for service delivery staff on the complaint procedures are arranged for and conducted by the EO Officer and/or the EO Coordinator as a part of regular staff training.

Filing Procedures

A. Who may file:

Any person may file who believes that he or she or any specific class of individuals has been or is being subjected to discrimination on the basis of race, color, national origin, religion, sex, age, disability, political affiliation or belief and, for beneficiaries only, citizenship or participation in any DLR or WIOA Title I-financially assisted program or activity. The complaint must be in writing and filed by the complainant or by an authorized representative. Those who may file include but are not limited to the following:

- Applicant/registrant for aid, benefits, services or training;
- Eligible applicant/registrants;
- Participants;
- Employees;
- Applicants for employment;

- Service providers (the organization involved is one which may be attributed a racial, national origin or other characteristic entitled to protection under WIOA); and
- Eligible service providers (same definition applies).

B. Where to File:

The complainant may file with the Recipient's EO Officer or with the Director of the Civil Rights Center.

Derek Gustafson
State EO Officer
SD Department of Labor
123 W. Missouri Ave.
Pierre, SD 57501
605-773-3101
711 Relay
Derek.Gustafson@state.sd.us

OR

Director
Civil Rights Center (CRC)
US Department of Labor
200 Constitution Avenue NW
Washington, DC 20210

C. When to File:

The complaint must be filed within 180 days of the alleged discrimination. Only the Director of the CRC, for good cause shown, may extend the filing time. The complainant has the burden of proving to the Director of the Civil Rights Center that the time limit should be extended.

D. What Complaint Form to Use:

A complainant may file a complaint by completing and submitting CRC's Complaint Information and Privacy Act Consent Forms. (DLR uses the CRC Complaint Information Form that is published in both English and Spanish; by

removing the Office of Management and Budget's approval number. See MOA Element 8 documentation.) A complaint form may be obtained either from the DLR EO Officer, the recipient's EO Coordinator or the CRC at the following address:

Civil Rights Center (CRC)
US Department of Labor
200 Constitution Avenue NW
Room N-4123
Washington, DC 20210

E. What to include in the Complaint:

Each complaint shall be in writing, using the Complaint Information Form (CIF) and shall:

- 1) Be signed by the complainant or complainant's authorized representative;
- 2) Contain the complainant's name and address (or specify another means of contacting complainant);
- 3) Identify the respondent (the individual/entity complainant alleges is responsible for discrimination); and
- 4) Describe the complainant's allegations in sufficient detail to determine whether:
 - a) Complaint is covered as applicable under CRC's or the recipient's jurisdiction;
 - b) Complaint is timely filed; and
 - c) Complaint has apparent merit, in other words, whether the complainant's allegations, if true, would violate any of the nondiscrimination and equal opportunity provisions of WIOA or 29 CFR Part 37.

F. Established Procedures:

- 1) Notice of the complaint shall be disseminated to all parties of the specific charges;
- 2) An impartial decision maker shall render decisions;
- 3) All parties shall have the right to representation;
- 4) All parties shall have the right to present evidence;
- 5) All parties specified in the complaint shall have the right to question others who present evidence; and
- 6) Decisions shall be rendered strictly on the recorded evidence.

G. Due Process Elements:

- 1) WITHIN TEN (10) CALENDAR DAYS of the filing of the complaint there is an acknowledgement sent to the complainant that the recipient has received the complaint.
 - a) The complainant is informed of his/her rights to be represented in the complaint process.
 - b) The complainant is informed of 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) WITHIN TWENTY (20) CALENDAR DAYS of the filing of the complaint the complainant accepts or rejects the offer of mediation.
 - a) If mediation is accepted, it is held WITHIN THIRTY (30) CALENDAR DAYS of the filing of the complaint.
 - b) If an agreement is reached that is satisfactory to both parties, the complaint is resolved.

- c) A party to any agreement reached under ADR may file a complaint with the director of the Civil Rights Center in the event the agreement is breached. In such circumstances, the following rules will apply:
 - 1. The non-breaching party may file a complaint with the Director of the Civil Rights Center within 30 days of the date on which the non-breaching party learns of the alleged breach;
 - 2. The Director of the Civil Rights Center must evaluate the circumstances to determine whether the agreement has been breached. If it is determined the agreement has been breached, the complainant may file a complaint with the Civil Rights Center based upon his/her original allegation(s), and the Director of the Civil Rights Center will waive the time deadline for filing such a complaint.
 - d) If the parties do not reach an agreement under ADR, the complainant will be given a Notice of Final Action of the right to file a complaint with the Director of the Civil Rights Center within 30 days of the notice date.
- 3) If mediation is not accepted WITHIN THIRTY (30) CALENDAR DAYS of the filing of the complaint, a notice to the complainant is sent that contains 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.
- 4) 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. Within this period a hearing will be conducted. The complainant and respondent shall be advised, in writing, of all procedural rights, i.e., representation, presentation of evidence, witnesses, etc.

- 5) 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 raise in the complaint, a statement of either:
 1. The recipient's decision of the issue and an explanation of the reasons underlying the decision or
 2. A description of the way the parties resolved the issue, and
 - b) Notice that 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 recipient's final action on the complaint.

H. Time Frames:

- 1) The complaint must be files within 180 days of the alleged discrimination.
Only the Director of the Civil Rights Center may extend this filing time period.
- 2) Any person who elects to file his or her complaint with the recipient shall allow the recipient 90 days to process the complaint.
- 3) The recipient shall offer a decision/Notice of Final Action within 90 days of the complaint and shall notify the complainant of his or her right to file a complaint with CRC within 30 days to process the complaint.
- 4) If, during this 90 day period, the recipient offers the complainant a decision/Notice of Final Action of the complaint, but the decision/Notice of Final Action offered is not satisfactory to the complainant, the complainant or his or her representative may file a complaint with the Director or the Civil Rights Center within 30 days after the recipient notifies the complainant of its proposed resolution.
- 5) If, by the end of 90 days, the recipient has not completed its processing of the complaint or the Notice of Final Action, the complainant or his or her representative may, within 30 days of the expiration of the 60-day period, file a complaint with the Director of the Civil Rights Center.

I. No Jurisdiction Determination:

If a recipient determines that it does not have jurisdiction over a complaint, it must notify the complainant, in writing immediately. The Notice of Lack of Jurisdiction must include:

- 1) A statement of the reasons for that determination, and
- 2) Notice that the complainant has a right to file a complaint with the Civil Rights Center within 30 days of the date on which the complainant receives the Notice.

Documentation:

See attachments: