



WIOA TITLE I DISCRIMINATION COMPLAINT POLICY AND PROCEDURE

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Sources: [2 CFR 200](#); [29 CFR 38](#);

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II. Purpose

The goal of this manual is to ensure the South Dakota Department of Labor and Regulation (DLR) is compliant with all federal and State laws and to prevent discrimination and retaliation in the workplace. This policy is intended to protect all WIOA Title I applicants, employees, and individuals providing services to the State from discriminatory conduct by employees or non-employees and to prevent employees from engaging in discriminatory conduct directed to any individual, whether employees or non-employees.

III. Discrimination Policy

The State of South Dakota will not tolerate harassment, discrimination or offensive behavior based on race, color, religion, national origin, sex (including pregnancy), age (40 years or older), genetic information, disability or any other legally protected status or characteristic.

A. General Criteria

1. It is against the law for recipients of federal financial assistance to discriminate on the following bases:
 - a. 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,
 - b. 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.
2. The recipient of WIOA Title I financial assistance must not discriminate directly or through contractual, licensing, or other arrangements, on any basis described above and must not:
 - a. Deny an individual any aid, benefits, services, or training provided under a WIOA Title I—funded program or activity;
 - b. Provide to an individual any aid, benefits, services, or training that is different, or is provided in a different manner, from that provided to others under a WIOA Title I—funded program or activity;
 - c. Subject an individual to segregation or separate treatment in any matter related to his or her receipt of any aid, benefits, services, or training under a WIOA Title I—funded program or activity;
 - d. Restrict an individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any aid, benefits, services, or training under a WIOA Title I—funded program or activity;
 - e. Treat an individual differently from others in determining whether he or she satisfies any admission, enrollment, eligibility, membership, or other requirement or condition for any aid, benefits, services, or training provided under a WIOA Title I—funded program or activity;
 - f. Deny or limit an individual with respect to any opportunity to participate in a WIOA Title I—funded program or activity, or afford him or her an opportunity to do so that is different from the opportunity afforded others under a WIOA Title I—funded program or activity;
 - g. Deny an individual the opportunity to participate as a member of a planning or advisory body that is an integral part of the WIOA Title I— funded program or activity; or
 - h. Otherwise limit on a prohibited ground an individual in enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any WIOA Title I—financially assisted aid, benefits, services, or training.

B. Prohibited Conduct

It is a violation of this policy to engage in protected class discrimination or harassment.

1. Protected class characteristics may not be used as a basis for taking employment action or making an employment decision resulting in a significant change in benefits, or terms and conditions of employment.

2. Harassing or offensive conduct directed at individuals based on protected class characteristics is prohibited under this policy, and includes, but is not limited to:
 - a. Unwanted physical contact, sexually suggestive or offensive touching, patting, hugging, or brushing against a person's clothing or body, pinching, or hitting;
 - b. Sexual advances, requests for sexual favors, repeated and unwanted attempts at a romantic relationship, sexually explicit questions, comments about physical attributes;
 - c. Lewd descriptions, sexual jokes, pressure for sexual activity, such as repeated requests for dates, and threats for refusing a sexual advance;
 - d. Displays of demeaning, insulting, objects, pictures, or photographs relating to any protected class;
 - e. Demeaning, insulting, intimidating, written, recorded, or electronically transmitted messages (such as email, text messages, voicemail, and Internet materials) relating to any protected class;
 - f. Derogatory comments, slurs, jokes, profanity, anecdotes, and/or offensive questions based on or directed at any protected class; and/or
 - g. Any employment action or decision that adversely impacts a protected class of employees or applicants.
3. Retaliation against an individual who makes a complaint, participates in an investigation, or provides information related to any complaint, is prohibited. Retaliation includes, but is not limited to, any adverse action taken or threat of adverse action in response to any of the following actions or any attempt to prevent an individual from taking any of the following actions:
 - a. Making a complaint of harassment or discrimination;
 - b. Making a request for reasonable accommodation;
 - c. Participating in a complaint investigation or proceeding; or
 - d. Otherwise opposing acts of discrimination.

Any person who feels a respondent has violated this prohibition may file a complaint alleging retaliation. Retaliation is a separate complaint and a respondent can be found responsible for retaliation and thus subject to sanctions and penalties, even if there is no finding of discrimination on the underlying complaint.

C. Responsibilities

1. Equal Opportunity Officer

The Equal Opportunity (EO) Officer is responsible for coordinating the recipient's obligations and compliance activities under the nondiscrimination and equal opportunity provisions of WIOA. Those responsibilities include, but are not limited to:

- a. Serving as the liaison with DLR and the U.S. Department of Labor (U.S. DOL), Civil Rights Center (CRC);
- b. Reviewing the recipient's written policies to ensure policies are not discriminatory;
- c. Developing and publishing procedures for processing discrimination complaints and ensuring those procedures are followed;
- d. Monitoring the recipient's activities and the activities of the entities receiving WIOA Title I funds from the recipient to ensure they are not violating nondiscrimination and EO provisions of 29 CFR 38 and 2 CFR 200;
- e. Process discriminatory complaints according to this policy and procedure manual. The EO Officer may delegate complaints to an EO Coordinator, who does not have a conflict of interest in the claim, if the complaint workload becomes too burdensome to process complaints according to this policy and procedure;
- f. Reporting directly to the appropriate official (i.e. DLR Secretary and Deputy Secretary) about equal opportunity matters and;
- g. Forward a copy of all DLR employee discrimination complaints to the agency's human resource manager.

- h. Document all discrimination complaints on the DLR Discrimination Complaint Log. The Discrimination Complaint Log, and actions taken regarding the complaints, must be maintained for three (3) years from the date of the resolution of the complaint.

2. Job Service Office EO Coordinator Responsibilities

- a. Maintaining a workplace free of harassment, discrimination, and retaliation. Managers and supervisors who witness or receive reports of offending action shall take immediate and appropriate action to ensure any wrongful behavior ceases, and shall forward all such reports to DLR EO Officer.
- b. Forwarding any discrimination complaints to the DLR EO Officer, and if applicable, to the agency's human resource manager.
- c. Distributing this Discrimination Complaint Policy and Procedure, the EO Poster, and any other pertinent information regarding notifying that DLR does not discriminate to all of its registrants, applicants, and eligible applicants/registrants for WIOA Title I programs or services, applicants for employment, and new and existing employees.
- d. Ensuring all registrants, applicants, and eligible applicants/registrants for WIOA Title I programs or services are made aware of their right to file a discrimination complaint and the process for doing so. The notice/acknowledgement form (see Element 2, Exhibit A of DLR's MOA) must be signed by the registrants, applicants, or eligible applicants/registrants for WIOA Title I programs or services and kept in participants/applicants file.
- e. Document all discrimination complaints on the DLR Discrimination Complaint Log and forward them to the DLR EO officer immediately. The Discrimination Complaint Log, and actions taken regarding the complaints, must be maintained for three (3) years from the date of the resolution of the complaint.
- f. Process discrimination claims delegated by the EO Officer according to this policy and procedure manual.

3. Employee Responsibilities

- a. Employees are expected to conduct themselves appropriately while at work and during work-related functions and refrain from any acts of discrimination, harassment, or retaliation.
- b. Employees who experience or observe any unlawful harassment, discrimination, or retaliation, have a duty and responsibility to report the incident(s) in order to correct and prevent unlawful harassment, discrimination, or retaliation.
- c. Forward any discriminatory complaints to their EO Coordinator (manager).

4. Subrecipients

Subrecipients who receive DLR funds are responsible for the following:

- a. In alignment with this policy and procedure, subrecipients are responsible for developing and enforcing their own discrimination/harassment free workplace policy and procedure, including policy and procedures for processing discrimination complaints.
- b. Subrecipients are responsible for distributing their discrimination/harassment free workplace policy and procedures to all of its employees who receive Federal or State funding from or through the DLR.
- c. Ensuring all registrants, applicants, and eligible applicants/registrants for WIOA Title I programs or services receive initial and continuous notice that the subrecipient doesn't discriminate on any prohibited ground.
- d. Ensuring all registrants, applicants, and eligible applicants/registrants for WIOA Title I programs or services are made aware of their right to file a discrimination complaint and the process for doing so. This notice must be documented and kept in participants/applicants file.
- e. Maintaining a workplace free of harassment, discrimination, and retaliation in accordance to 29 CFR 38; WIOA section 188; Section 504 of the Rehabilitation Act; 29 CFR 32; Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; The Age Discrimination Act of 1975; Title IX of the

Education Amendments of 1972; Pregnancy Discrimination Act of 1978; and all other regulations implementing these laws listed.

D. Complaints Not Based on Discrimination

DLR has a written policy on complaint resolution for complaints not based on discrimination as set forth in 20 C.F.R. §667.600. If a complaint is not based on discrimination, but on program or customer service issues, process the complaint in accordance with local policies and procedures. Examples might include complaints of discourteous treatment by a DLR staff or violations of the terms and conditions of a job posting in SDWORKS. Once received, an attempt to resolve the complaint at DLR local level must be made. If this is not possible, refer the complaint to the Central Office level for resolution. In the event the complaint cannot be resolved at the Central Office level, the complaint may be referred to the appropriate state or federal agency, if applicable.

IV. Complaint Procedures

These procedures are divided into whether they are complaints about discrimination prohibited by:

- a. Federal laws prohibiting discrimination against applicants for benefits and services, recipients, On-the-Job training employers, participants, and any other beneficiary of WIOA Title I funds or
- b. Federal and/or State statutes against the DLR employment discrimination only.

Section A covers complaints about discrimination prohibited by the WIOA, which includes discrimination against applicants, registrants or participants of benefits and services by Recipients including State-level agencies that administer WIOA Title I funds, State Employment Security Agencies, State & Local Workforce Investment Boards, Grant Recipients, One-Stop Operators, Training Providers, On-the-Job Training Employers, Employers, and entities participating in the Job Corps program. Section B covers complaints about discrimination prohibited against employment discrimination only.

A. Complaints

Complaints covered by Federal Laws Prohibiting Discrimination Against Beneficiaries of WIOA Title I Funds.

1. Who may file

Any person may file who believes 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 of belief and, for beneficiaries only, citizenship or participation in any of DLR or WIOA Title I-financially assisted program or activity. The complaint must be in writing, signed by the complainant, and filed by the complainant or by an authorized representative. Those who may file include but are not limited to the following:

- a. Applicant/registrant for aid, benefits, services or training;
- b. Eligible applicant/registrants;
- c. Participants;
- d. Employees;
- e. Applicants for employment;
- f. Service providers (the organization involved is one which may be attributed a racial, national origin or other characteristic entitled to protection under WIOA); and
- g. Eligible service providers (same definition applies).

2. Where to File

The complainant may file with the Recipient's EO Officer, or with the Director of the CRC.

Derek Gustafson

State EO Officer
SD Department of Labor
123 W. Missouri Ave.
Pierre, SD 57501
605.773.3101
Derek.Gustafson@state.sd.us;

Persons who are deaf, hard-of-hearing or speech-disabled may call Relay South Dakota at 711. If calling from outside South Dakota, call 800.877.1113. For Spanish language calls, use 877.981.9743.

OR

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

3. 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 CRC that the time limit should be extended.

4. What Complaint Form to Use

A complainant may file a complaint by completing and submitting an [ETA 8429 form](#).

5. What to include in the Complaint

Each complaint must be in writing, using the ETA 8429 form and must contain the following information:

- a. Be signed by the complainant or complainant's authorized representative, except if the complaint is an Apparent violation;
- b. Contain the complainant's name and address (or specify another means of contacting complainant);
- c. Identify the respondent (the individual/entity complainant alleges is responsible for discrimination); and
- d. Describe the complainant's allegations in sufficient detail to determine whether:
 - i. Complaint is covered as applicable under CRC's or the recipient's jurisdiction;
 - ii. Complaint is timely filed; and
 - iii. 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 38.

6. Established Procedures

- a. Notice of the complaint shall be disseminated to all parties of the specific charges;
- b. An impartial decision maker shall render decisions;
- c. All parties shall have the right to representation;
- d. All parties shall have the right to present evidence;
- e. All parties specified in the complaint shall have the right to question others who present evidence; and
- f. Decisions shall be rendered strictly on the recorded evidence.

7. Incomplete Complaints

- a. If a complaint does not contain enough information, the EO Officer must try to get the needed information from the complainant.
- b. The EO Officer may close the complainant's file, without prejudice, if:

- i. The EO Officer makes reasonable efforts to try to find the complainant, but is unable to reach him or her; or
 - ii. The complainant does not provide the needed information within the time specified in the request for more information.
- c. If the EO Officer closes the complainant's file, he or she must send written notice to the complainant's last known address.

8. Time Frames

- a. The complaint must be filed within 180 days of the alleged discrimination. Only the Director of the CRC may extend this filing time period.
- b. Any person who elects to file his or her complaint with the recipient shall allow the recipient 90 days to process the complaint.
- c. 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.
- d. 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 CRC within 30 days after the recipient notifies the complainant of its proposed resolution.
- e. 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 90-day period, file a complaint with the Director of the CRC.

9. No Jurisdiction Determination

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

- a. A statement of the reasons for that determination, and
- b. Notice the complainant has a right to file a complaint with the CRC within 30 days of the date on which the complainant receives the Notice.

B. Due Process Elements

1. Acknowledgment Letter

WITHIN TEN (10) CALENDAR DAYS of the filing of the complaint, the EO Officer will contact the complainant acknowledging receipt of the complaint.

- a. The complainant is informed of his/her rights to be represented in the complaint process.
- b. 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 mediation process is explained to the complainant.

2. Alternative Dispute Resolution (ADR)

An Alternative Dispute Resolution is a process where all parties agree on a resolution to the discrimination complaint without going through the entire complaint process. The process must be directed by the Equal Opportunity Officer or his/her designee who does not have a conflict of interest in the complaint.

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 CRC in the event the agreement is breached. In such circumstances, the following rules will apply:

- i. The non-breaching party may file a complaint with the Director of the CRC within 30 days of the date on which the non-breaching party learns of the alleged breach;
 - ii. The Director of the CRC 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 CRC based upon his/her original allegation(s), and the Director of the CRC 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 CRC within 30 days of the notice date.

3. Mediation Not Accepted

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 DLR will accept the issue for investigation or reject the issue, and the reasons for each rejection.

4. A Period For Fact-finding

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. 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. The recipient'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 CRC 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.

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 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 that are 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.

8. 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 the 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.

C. Discrimination Complaints by a DLR Employee

1. An employee who has a complaint of harassment, discriminatory or offensive behavior by anyone, including supervisors, co-workers, or non-employees, should immediately notify his or her supervisor, a higher-level supervisor, the agency's human resource manager, or the EEO officer for the Bureau of Human Resources at (605) 773-4918. The person who receives a harassment or discrimination complaint shall immediately report the matter to his or her supervisor (or a higher-level supervisor if his or her supervisor is allegedly involved in the harassment) and the agency's human resource manager.
2. The State will investigate all complaints. If the investigation supports charges of harassment, discrimination, a violation of this policy, or inappropriate behavior, appropriate corrective action will take place. The employee engaging in the improper behavior will be subject to discipline, up to and including termination.
3. The State will protect the confidentiality of harassment/discrimination allegations to the maximum extent possible, and information will only be shared with those individuals who need to know about it. While the State cannot guarantee complete confidentiality because it cannot conduct an effective investigation without revealing certain information to the alleged harasser and potential witnesses, it will keep information as confidential as possible.
4. The State will not tolerate adverse treatment of employees because they report harassment, oppose discrimination in the workplace, participate in the complaint process, or provide information related to complaints. If an employee feels he or she has been subjected to retaliation, the employee should immediately report the alleged retaliation to his or her supervisor, a higher-level supervisor, the agency's human resource manager, or the Equal Employee Opportunity (EEO) officer for the Bureau of Human Resources.
5. In addition to reporting alleged harassment or discrimination to the State, an employee may file a charge of discrimination based on race, color, religion, national origin, sex, disability, or protected activity with the South Dakota Division of Human Rights (Human Rights) or may file a charge of discrimination based on race, color, religion, national origin, sex, age, disability, genetic information, or protected activity with the United States Equal Employment Opportunity Commission (EEOC). A charge of discrimination based on race, color, religion, national origin, sex, disability, or protected activity must be filed with Human Rights or with the EEOC within 300 days of the violation. A charge of age discrimination or discrimination based on genetic information must be filed with the EEOC within 180 days of the violation. These deadlines run from the last date of unlawful conduct and not from the date of the complaint to the State if resolved. Please contact the EEO officer for the Bureau of Human Resources at 605.773.4918 if you have any questions about harassment, unlawful discrimination, or this policy.