

# DISCRIMINATION

The South Dakota Department of Labor and Regulation (DLR) Job Service Offices must be compliant with all federal and state laws and prevent discrimination and retaliation in the workplace. This policy is intended to protect workforce program applicants or participants, and DLR workforce program employees from discriminatory conduct. This policy is also intended to prevent DLR workforce program employees, subrecipients, or partners providing workforce services from engaging in discriminatory conduct directed to any individual.

DLR 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.

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 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.

## WIOA TITLE I FINANCIAL ASSISTANCE

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:

- Deny an individual any aid, benefits, services, or training provided under a WIOA Title I—funded program or activity;
- 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;
- 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;
- 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;
- 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;
- 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;
- 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
- 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.

## PROHIBITED CONDUCT

It is a violation to engage in protected class discrimination or harassment. 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. Harassing or offensive conduct directed at individuals based on protected class characteristics is prohibited under this policy, and includes, but is not limited to:

- Unwanted physical contact, sexually suggestive or offensive touching, patting, hugging, or brushing against a person's clothing or body, pinching, or hitting;
- Sexual advances, requests for sexual favors, repeated and unwanted attempts at a romantic relationship, sexually explicit questions, comments about physical attributes;

- Lewd descriptions, sexual jokes, pressure for sexual activity, such as repeated requests for dates, and threats for refusing a sexual advance;
- Displays of demeaning, insulting, objects, pictures, or photographs relating to any protected class;
- Demeaning, insulting, intimidating, written, recorded, or electronically transmitted messages (such as email, text messages, voicemail, and Internet materials) relating to any protected class;
- Derogatory comments, slurs, jokes, profanity, anecdotes, and/or offensive questions based on or directed at any protected class; and/or
- Any employment action or decision that adversely impacts a protected class of employees or applicants.

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:

- Making a complaint of harassment or discrimination;
- Making a request for reasonable accommodation;
- Participating in a complaint investigation or proceeding; or
- 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.

## **RESPONSIBILITIES**

### ***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:

- Serving as the liaison with DLR and the U.S. Department of Labor (U.S. DOL), Civil Rights Center (CRC);
- Reviewing the recipient's written policies to ensure policies are not discriminatory;
- Developing and publishing procedures for processing discrimination complaints and ensuring those procedures are followed;
- 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;
- 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;
- Reporting directly to the appropriate official (i.e. DLR Secretary and Deputy Secretary) about equal opportunity matters and;
- Forward a copy of all DLR employee discrimination complaints to the agency's human resource manager.

### ***Job Service Office EO Coordinator***

- The Job Service Office EO Coordinator is appointed as the Complaint System Representative. The responsibilities of the Complaint System Representative may also be delegated to designee(s). Both the Complaint Representative and Designee(s) must complete the General Complaint Process (All Staff) and Complaint Process for Managers/Designee training courses found in DLR Learn.
- Responsibility of the Complaint System Representative include processing any employment law or job service-related complaint, refer the complainant to the appropriate enforcement agency, and logging the complaint on the complaint log with the required information. 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.

- Forwarding any job service-related discrimination complaints to the DLR EO Officer, and if applicable, to the agency's human resource manager.
- Forwarding any discrimination complaints to the DLR EO Officer, and if applicable, to the agency's human resource manager.
- 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.
- 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.
- 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.
- Process discrimination claims delegated by the EO Officer according to this policy and procedure manual.

#### ***DLR Employee***

- Job Service Office employees must complete the General Complaint Process (All Staff) training found in DLR Learn.
- Forward any employment law and job service discriminatory complaints to their EO Coordinator (manager) or designee.
- 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.
- 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.

#### ***Subrecipients***

Subrecipients who receive DLR funds are responsible for developing and enforcing their own discrimination and harassment free workplace policy and procedure, including policy and procedures for processing discrimination complaints, and 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.

- 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.
- 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.

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.