

LOS ANGELES COUNTY DIRECTIVE

WIA Adult and Dislocated Worker

NUMBER: D-DWA-02-002 **SUBJECT: Nondiscrimination and Equal Opportunity Procedures**

DATE: 05/01/03

EFFECTIVE DATE: IMMEDIATELY

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TO: WORKSOURCE CENTERS AND OTHER AGENCIES AND PROJECTS FUNDED WITH WIA TITLE I MONIES

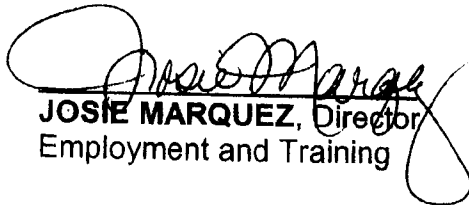
References:

- Section 188 of the Workforce Investment Act of 1998
- Americans with Disabilities Act of 1990, Title II, Subpart A, et al

The State intends to monitor recipients of Workforce Investment Act (WIA) Title I funds for compliance with State policy on nondiscrimination and equal opportunity procedures. This policy applies to the County of Los Angeles and its WIA contractors and projects funded with WIA Title I monies.

The State Employment Development Department (EDD) Directive Number WIAD01-21 provides details. This directive can be downloaded from www.edd.ca.gov/wiadir.htm. It is essential that your agency establishes written procedures incorporating this policy in your WIA operation and that staff, contractors, collaborative partners, and customers are informed as to how it applies to them.

Furthermore, all discrimination and equal opportunity issues requiring County level intervention should be addressed to Mr. Walter Bogaardt, Los Angeles County Workforce Investment Board (LAC-WIB) Equal Opportunity (EO) Officer. He can be reached at (213) 738-4003 or by email at wboggard@css.co.la.ca.us. You may also contact him at Los Angeles County, Community and Senior Services, 3175 West Sixth Street, Room 305, Los Angeles, California 90020.


JOSIE MARQUEZ, Director
Employment and Training

JM:MM:SM:bu



State of California

DIRECTIVE

WORKFORCE INVESTMENT ACT

Number: WIAD01-21

Date: June 25, 2002

69141:va:5241

TO: WORKFORCE DEVELOPMENT COMMUNITY

SUBJECT: NONDISCRIMINATION AND EQUAL OPPORTUNITY PROCEDURES

EXECUTIVE SUMMARY:

Purpose:

This directive establishes the State's policy on the nondiscrimination and equal opportunity procedures for the Workforce Investment Act (WIA) Title I financially assisted programs or activities.

Scope:

This directive applies to Local Workforce Investment Areas (LWIA) and other WIA Title I grant recipients.

Effective Date:

This directive is effective on date of issue.

REFERENCES:

- Section 188 of the Workforce Investment Act of 1998
- Americans with Disabilities Act of 1990, Title II, Subpart A
- Age Discrimination Act of 1975, as amended
- Section 504 of the Rehabilitation Act of 1973
- Title IX of the Education Amendments of 1972
- Titles VI and VII of the Civil Rights Act of 1964, as amended
- Title 20 Code of Federal Regulations (CFR) Section 667.275
- Title 29 CFR Parts 31, 32, and 37
- Title 41 CFR Subpart 101-19.6
- Dymally-Alatorre Bilingual Services Act, Government Code Section 7290-7299.8
- WIA Directive WIAD01-8, Subject: Limited English Proficiency (October 2, 2001)

STATE-IMPOSED REQUIREMENTS:

This directive contains some State-imposed requirements. These requirements are indicated by **bold**, *italic* type.

1. Designation of Local-Level Equal Opportunity (EO) Officer

Each LWIA must designate an EO Officer who is responsible for coordinating its obligations under these regulations. ***The State requires that the LWIAs notify the Workforce Investment Division (WID) whenever the designation of the local EO Officer changes.***

The EO Officer's responsibilities include:

- Informing employees and participants of their rights and responsibilities;
- Developing, publishing, and overseeing procedures for processing complaints pursuant to Title 29 CFR Sections 37.76 through 37.79 and ensuring those procedures are followed;
- Hearing, answering, and advising individuals on complaints of discrimination;
- Explaining to LWIA grant recipient employees or participants how the equal opportunity complaint system works; and
- Serving as liaison with the Civil Rights Center (CRC).

The LWIAs must submit a copy of the local-level EO Officer's position description and organizational chart showing the relationship of each local-level EO Officer to the LWIA Administrator. The LWIAs will assign sufficient staff and resources to the EO Officer to ensure compliance with the nondiscrimination and equal opportunity provisions of WIA and Title 29 CFR Section 37.23.

Please mail required documents to the following address:

***Walter Johnson
Workforce Investment Division
Employment Development Department
800 Capitol Mall, MIC 69
P.O. Box 826880
Sacramento, CA 94280-0001***

The EO Officer's name, position title, business address (including e-mail address if applicable) and telephone number (voice and Telecommunications Device for the Deaf [TDD], which is also known as teletypewriter [TTY]) must be publicized at the local level through a variety of means including posters, handouts, and listings in local directories.

Periodic training is recommended for the EO Officer and staff to keep abreast of equal opportunity issues. Training on nondiscrimination and equal opportunity is provided through the State EO Officer and the Capacity Building Unit of WID.

Small recipients and service providers, as defined in Section 37.4, need not designate an EO Officer with the full responsibilities as described above, but must

financially assisted program or activity is an equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities." This applies similarly to those recipients required by law or regulation to publish or broadcast program information in public media. Where appropriate, information and services should be additionally provided in languages other than English.

On August 11, 2000, President Clinton issued Executive Order 13166, entitled "*Improving Access to Services for Persons with Limited English Proficiency*." This Executive Order mandates that individuals with limited English proficiency (LEP) have equal access to federally funded programs and activities. As required by Executive Order 13166, the DOL/CRC published policy guidance in the Federal Register (January 17, 2001) regarding the prohibition against national origin discrimination as it affects LEP individuals. This policy offers guidance from the DOL with respect to the responsibilities of recipients of federal financial assistance in serving LEP individuals, pursuant to the requirements of Title VI of the Civil Rights Act and Section 188 of WIA. Recipients of federal financial assistance must take reasonable steps to ensure that individuals having LEP receive the language assistance necessary to afford them meaningful access to programs, services, and information provided by the recipients.

The Dymally-Alatorre Bilingual Services Act (DABSA) requires that, when state and local agencies serve a "substantial number of non-English-speaking people," they must employ a "sufficient number of qualified bilingual staff in public contact positions" and translate documents explaining available services into their clients' languages. The DABSA establishes specific legal mandates for state agencies, but allows local agencies discretion in establishing the level and extent of bilingual services they provide.

Where materials indicate that the recipients may be reached by telephone, the telephone number of any TDD/TTY or relay service used by the recipient must be indicated. If the recipient does not have a TDD/TTY, the California Relay Service (CRS) (1-800/735-2922) is an alternative. The CRS relays messages to deaf persons via the telephone. A caller can contact the relay service by voice or TDD, and an operator will contact the party to be called using voice or TDD/TTY. A TDD/TTY or relay service should be available where services provided by telephone are a major function of the program or activity.

3. Review Assurances in Job Training Plans, Contracts, and Policies and Procedures

A system must be implemented to ensure that all contracts, job training plans, and policies and procedures contain the nondiscrimination assurance as specified. The nondiscrimination assurance must state that the grant applicant will "comply fully with the nondiscrimination and equal opportunity provisions" of WIA and acknowledge the government's right to seek judicial enforcement of the nondiscrimination assurance.

Title 29 CFR Section 37.20 requires that each application for federal financial assistance under Title I of WIA must include the nondiscrimination assurance.

- The international symbol for accessibility at each primary entrance of an accessible facility;
- Building entrance doors that can be opened with one hand;
- Accessible information/public counter areas;
- Facility elevators that are accessible from the entrance meeting the above criteria;
- Elevator control panel and entrance buttons with raised numbers and Braille symbols at an accessible height;
- At least one accessible public telephone;
- Accessible meeting rooms with Braille symbols at an accessible height;
- Restroom facilities that have at least one toilet stall with an accessible doorway. The stall should have grab bars and the toilet stool should be accessible for the disabled individual after the door is closed (access to the grab bars should not be obstructed by such things as toilet paper dispensers, etc.); and
- Alternative methods to ensure that training, job structure, work schedule, work procedure, and work equipment are available to individuals with disabilities when the facilities are not physically accessible to individuals with disabilities.

Title 29 CFR Section 37.8—What are a recipient's responsibilities regarding reasonable accommodation and reasonable modification for individuals with disabilities? With regard to aid, benefits, services, training, and employment, a recipient must:

- Provide reasonable accommodation to qualified individuals with disabilities, who are applicants, registrants, eligible applicants/registrants, participants, employees, or applicants for employment, unless providing the accommodation would cause the recipient undue hardship on business operations; and
- Make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless making the modifications would fundamentally alter the nature of the WIA Title I financially assisted service, program, or activity.

In those circumstances where a recipient believes that the proposed accommodation would cause undue hardship or the proposed modification would fundamentally alter the program, the recipient has the burden of proving that compliance with this section would result in such hardship and alteration. The recipient must make the decision that the accommodation would cause such hardship or result in such alteration after considering all factors listed in the definitions of "undue hardship" and "fundamental alteration." The decision must be accompanied by a written statement of the recipient's reasons for reaching that conclusion. The recipient must provide a copy of the statement of reasons to the individual(s) who requested the modification.

If a requested accommodation would result in undue hardship or a modification would result in a fundamental alteration, the recipient must take any other action that

- Promptly notify the CRC of any administrative enforcement actions or lawsuits filed against a LWIA alleging discrimination on the grounds of race, color, religion, sex, national origin, age, disability, political affiliation or belief, and for beneficiaries only, citizenship or participation in a WIA Title I financially assisted program and activity. Provide a brief description of the findings in any civil rights compliance review where the applicant or recipient was found in noncompliance and keeps a log containing certain information regarding complaints filed with it according to procedures set by CRC;
- Retain records, including records of complaints, for a period of not less than three years from the close of the applicable program year or date of resolution of complaint; and
- Adopt procedures for responding to complaints of discrimination.

7. Monitor Recipients for Compliance

In accordance with Title 29 CFR Sections 37.54(d)(2)(ii) and 37.54(d)(2)(iii), the Compliance Review Division (CRD) of EDD's Program Review Branch monitors LWIAs for compliance with WIA provisions and related regulations.

The CRD requires that each LWIA complete and submit to the CRD a Nondiscrimination and Equal Opportunity Self-Evaluation annually. The CRD will review the self-evaluations, along with other equal opportunity-related data, and coordinate with EDD's Equal Opportunity Office in determining if the LWIA will be monitored on-site during a given program year. Through self-evaluations, LWIAs can identify the compliance status of their programs, activities, and areas in which they need technical assistance.

8. Complaint Processing Procedures

In compliance with nondiscrimination and equal opportunity provisions of the WIA and Title 29 CFR Section 37.76, the EO Officer must:

- Develop and publish procedures (including alternative dispute resolution) for resolving allegations within the LWIA for noncompliance with applicable nondiscrimination and equal opportunity provisions;
- Develop and publish procedures for resolving allegations against service providers for noncompliance with applicable nondiscrimination and equal opportunity provisions. The service providers must then follow those procedures (NOTE: Although the LWIA does not have the same contractual jurisdiction with vendors as with service providers, ***the LWIA shall document the facts of an alleged complaint. The facts should be used to advise the participant of any recourse available and to determine if the LWIA should continue to utilize the services of the vendor.***); and
- Establish a system to record discrimination complaints.

The mediator does not make decisions, rule as to who is right or wrong, take sides or advocate for one side or the other. The role of the mediator is to help with communication so the parties can reach an understanding about how to best resolve their differences.

As the law allows, mediation proceedings and the information shared are confidential and no information divulged during this mediation may be used in court or any legal or administrative proceedings.

If the parties do not reach an agreement under ADR, the complainant may file directly with CRC as described in Title 29 CFR Sections 37.71 through 37.74.

- (2) A party to any agreement reached under ADR may file a complaint with CRC in the event the agreement is breached. In such circumstances, the following rules will apply:
- The non-breaching party may file a complaint with CRC within 30 days of the date on which the non-breaching party learns of the alleged breach.
 - The CRC must evaluate the circumstances to determine whether the agreement has been breached. If CRC determines that the agreement has been breached, the complainant may file a complaint with CRC based upon his or her original allegation(s), and CRC will waive the time deadline for filing such a complaint.

Complaints filed with the LWIA:

- a. The EO Officer shall issue a written acknowledgement of receipt by the LWIA of a complaint alleging discrimination by a WIA Title I recipient and shall include a notice of the complainant's right to representation in the complaint process.

The Equal Employment Opportunity Office and WID require a copy of the complaint. Please mail one copy to each of the following addresses:

***Chief
Equal Employment Opportunity Office
Employment Development Department
800 Capitol Mall, MIC 49
P. O. Box 826880
Sacramento, CA 94280-0001***

***Walter Johnson
Workforce Investment Division
Employment Development Department
800 Capitol Mall, MIC 69
P.O. Box 826880
Sacramento, CA 94280-0001***

- Advise the LWIA and complainant on the issues over which CRC has accepted jurisdiction.
- b. The LWIA, the complainant, or a representative may contact CRC for information regarding the complaint filed.
 - c. When a complaint contains insufficient information, CRC will seek the needed information from the complainant. If the complainant is unavailable after reasonable efforts have been made to reach him or her, or the information is not provided within the time specified, the complaint file may be closed without prejudice upon written notice sent to the complainant's last known address.
 - d. The CRC, per WIA Section 183(c), may issue a subpoena to the complainant to appear and give testimony and/or produce documentary evidence, before a designated representative, relating to the complaint being investigated. Issuing a subpoena can be done any place in the United States, at any designated time and place.
 - e. Where CRC lacks jurisdiction over a complaint, CRC shall:
 - Notify the complainant, explaining why the complaint is not covered by the nondiscrimination and equal opportunity provisions of WIA or Title 29 CFR Part 37; and
 - Refer the complainant to the appropriate federal, state, or local authority, when possible.
 - f. The CRC will notify the complainant when a claim is not to be investigated and explain the basis for that determination.
 - g. The CRC will refer complaints governed by the Age Discrimination Act of 1975 to mediation as specified in Title 45 CFR Section 90.43(c)(3).
 - h. If the complainant alleges more than one kind of complaint, "joint complaint," e.g., individual employment discrimination, age discrimination, equal pay discrimination, etc., CRC shall refer such joint complaint to the Equal Employment Opportunity Commission for investigation and conciliation under the procedures described in Title 29 CFR, Parts 1690 or 1691, as appropriate. The CRC will advise the complainant and the LWIA of the referral.
 - i. Under the One-Stop delivery system where the complainant alleges discrimination by an entity that operates a program or activity financially assisted by a federal grantmaking agency other than DOL, but participates as a partner in a One-Stop delivery system, the following procedures apply:
 - If the complainant alleges discrimination on a basis that is prohibited both by Section 188 of WIA and by a civil rights law enforced by the federal grantmaking agency, CRC and the grantmaking agency have dual jurisdiction over the complaint. The CRC will refer the complaint to the grantmaking

- Breaches of Conciliation Agreements, Sections 37.102-37.105
- Subpart E-Federal Procedures for Effecting Compliance, Sections 37.110-37.115

Intimidation and Retaliation Prohibited:

No recipient may discharge, intimidate, retaliate, threaten, coerce, or discriminate against any individual because the individual has filed a complaint; opposed a practice prohibited by the nondiscrimination and equal opportunity provisions of the WIA; furnished information to, or assisted or participated in any manner in an investigation, review, hearing, or any other activity related to administration of, exercise of authority under, or exercise of privilege secured by the nondiscrimination and equal opportunity of WIA or Title 29 CFR Part 37. The sanctions and penalties contained in these procedures may be imposed against any recipient who engages in any such retaliation or intimidation, or fails to take necessary steps to prevent such activity.

ACTION:

Bring this directive to the attention of affected staff.

INQUIRIES:

Please direct inquiries about this directive to your regional advisor at (916) 653-6347 or Walter Johnson, Workforce Advisory Section, at (916) 654-9698.

/S/ BILL BURKE
Chief
Workforce Investment Division

Attachment

WHAT TO DO IF YOU BELIEVE YOU HAVE EXPERIENCED DISCRIMINATION

If you think that you have been subjected to discrimination under a WIA Title I financially assisted program or activity, you may file a complaint within 180 days from the date of the alleged violation with either:

The recipient's Equal Opportunity Officer (or the person whom the recipient has designated for this purpose); or The Director, Civil Rights Center (CRC), U.S. Department of Labor, 200 Constitution Avenue NW, Room N-4123, Washington, DC 20210.

If you file your complaint with the recipient, you must wait either until the recipient issues a written Notice of Final Action, or until 90 days have passed (whichever is sooner), before filing with the Civil Rights Center (see address above).

If the recipient does not give you a written Notice of Final Action within 90 days of the day on which you filed your complaint, you do not have to wait for the recipient to issue that Notice before filing a complaint with CRC. However, you must file your CRC complaint within 30 days of the 90-day deadline (in other words, within 120 days after the day on which you filed your complaint with the recipient).

If the recipient does give you a written Notice of Final Action on your complaint, but you are dissatisfied with the decision or resolution, you may file a complaint with CRC. You must file your CRC complaint within 30 days of the date on which you received the Notice of Final Action.